Oregon Housing and Community Services

Qualified Allocation Plan

2005/2006

LOW INCOME HOUSING TAX CREDIT PROGRAM

Effective ~~January 1, 2005~~ July 22, 2004
(Correction to original edition)

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Approval of the State of Oregon
2005/2006 Low Income Housing Tax Credit Program
Qualified Allocation Plan

I, Theodore R. Kulongoski, Governor of the State of Oregon, do hereby approve for implementation the 2005/2006 Low Income housing Tax Credit Qualified Allocation Plan as presented to me by the Oregon Housing and Community Services Department under the provisions of IRC Section 42, Executive Order EO-87-06 and OAR Chapter 813, Division 90.

Governor Theodore R. Kulongoski

7/22/04

Date

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LIHTC QUALIFIED ALLOCATION PLAN

For the Period Beginning January 2005 and Thereafter

Administrative Authority

The Low-Income Housing Tax Credit Program was created under the provisions of the Tax Reform Act of 1986 to encourage the development of rental housing for low-income households. Oregon Housing and Community Services ("Department") by Executive Order EO-87-06 from the Governor is the designated administrator of the Low-Income Housing Tax Credit (LIHTC) Program with the responsibility of allocating the State's annual per capita and non-competitive credit authority in accordance with an approved Qualified Allocation Plan. Section 42 of the Internal Revenue Code ("IRC"), as amended, specifies the requirements for said Qualified Allocation Plan. The Department shall further administer the Program in accordance with OAR Chapter 813, Division 90, and shall maintain a record of allocations and the balance of Credit Authority remaining for each calendar year. The records shall account separately for Credit Authority set-asides under OAR 813-90-025.

This Qualified Allocation Plan constitutes a revision of the Qualified Allocation Plan previously approved on April 17, 2002. Public hearings to gather comment on the plan were held on March 16, 2004 and March 18, 2004 in The Dalles and Salem, respectively, after appropriate notice as required by law.

Pursuant to ORS 456.555(6)(a), the State Housing Council (the "Council"), with the advice of the Director of the Department, sets policy and approves or disapproves rules and standards for housing programs of the Department. The Council's Oregon Affordable Housing Policy Statement that outlines these principles is included in Exhibit C. The specific changes made to the 2003 - 2004 QAP are included as Exhibit H in the 2005- 2006 QAP. The State Housing Council approved the revised plan contained herein on May 28, 2004. The Honorable Theodore R. Kulongoski, Governor of the State of Oregon, approved this Qualified Allocation Plan on July 22, 2004.

Introduction

Overview of the Credit

The Low Income Housing Tax Credit (LIHTC) was enacted by Congress to encourage new construction and rehabilitation of rental housing for low-income households. In establishing the tax credit incentive, Congress recognized that developers may not receive enough rental income from a low income housing development to: 1) cover the costs of developing and operating the project, and 2) provide a return to investors sufficient to attract the equity investment needed for development. To spur investment, Congress authorized the states, within specified limits; to allocate tax credits to qualifying housing projects. The credits may be shared among owners (equity investors), much as income and losses are shared among business partners for tax purposes. Generally, syndicators recruit the investors, and ownership rights are controlled by limited partnership agreements.

Administration and Types of Credit

The LIHTC program is jointly administered by the Internal Revenue Service (IRS) and state tax credit allocation agencies, such as Oregon Housing and Community Services (the "Department" or "OHCS"). Credits are provided to states to allocate to eligible affordable housing projects. Currently, each state is allocated annual tax credits in an amount equal to $1.80 per state resident as of 2004 with annual increases indexed to inflation. These credits are considered to be under the State's per capita credit authority and are a limited and scarce resource. Oregon is also provided with access to tax credits associated with the State's Private Activity Bond Authority. These credits are not subject to the per capita credit authority but are only available to projects that are financed using tax-exempt bond proceeds. Credit types are more specifically defined below:

- 9% Credits
  Reflect approximately 70 percent of the qualified basis for new construction or substantial rehabilitation of qualified low income buildings
  Are available for the cost of a new building construction or a building substantially rehabilitated without a "federal subsidy[1]".
  The 9% credit is subject to the per capita credit authority and is generally awarded annually under a competitive application process called the Consolidated Funding Cycle (CFC). The 9% credit may also be awarded via other competitive processes (such as an RFP) from time to time.

- Competitive 4% Credits

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[1] Federal subsidy is defined by Section 42 of the IRC as several forms of financing, including, but not limited to, HOME funds (unless certain specific circumstances are present), any debt obligation the interest of which is exempt from tax under IRC§103 or a direct or indirect federal loan, if the interest rate is below the Federal Applicable Rate in effect at the time the loan was made, and RD Section 515 funds.

Reflect approximately 30 percent of the qualified basis of acquired buildings that are substantially rehabilitated, and are used for federally funded developments such as Rural Development 515 projects.

- Non- competitive 4% Credits
  Reflect approximately 30 percent of the qualified basis of newly constructed or acquired buildings that are substantially rehabilitated and financed with tax-exempt bond proceeds.

Although the terms 9% and 4% are used, the 9% and 4% figures are approximate. The IRS sets the actual credit percentages on a monthly basis. A project can qualify for one of the three credits or a combination of the credits.

The cost of acquiring, rehabilitating, and constructing a building constitutes the building's eligible basis. The portion of the eligible basis attributable to low-income units is the building's qualified basis. In general, the qualified basis excludes the cost of land, obtaining permanent financing, rent reserves, syndication and marketing. The applicable percentage (that is the 9% and 4% approximations) of the qualified basis may be claimed annually for 10 years as the low income housing tax credit. The amount of LIHTC that may be awarded to a building is based upon the depreciable cost of the building and the portion of the project that low income households will occupy and can be no more than needed to make the project financially feasible.

Overview of the Credit Allocation and Review Process

Under Section 42 of the Internal Revenue Code, the Department is responsible for determining which applicants should receive the tax credit and the dollar amount of credits each should receive. In making these determinations, the Department must comply with **federal requirements** and meet the following program goals:

- Give preference to projects that provide housing to households with the lowest incomes for the longest period of time,
- Assist in affordable housing development in areas with the greatest low income housing needs,
- Provide housing for special needs populations,
- Encourage approaches in design, planning, building and financing of low income housing that maintains quality and long term sustainability, durability and ease of maintenance of affordable units,
- Encourage equitable allocation of credits across the state,
- Encourage resident services and community involvement,
- Provide an allocation of tax credits in an amount sufficient to make the project financially feasible and viable as a low income housing project throughout the compliance period,
- Provide a preference for projects located in Qualified Census Tracts, a designated state or federal empowerment/enterprise zone or Public Improvement District (PIDs), or other area or zone where a city or county has, through a local government initiative, encouraged or channeled growth, neighborhood preservation or redevelopment. Any of these activities must contributes to a concerted community development plan,

- Provide a preference for tenant populations of individuals with children and,
- Provide a preference for eventual tenant ownership.

In addition, the Department may supplement these general goals with more specific local goals in order to meet local low-income housing needs. This may include but not be limited to:

- Mixed income projects where appropriate,
- Mixed use projects where appropriate,
- Acquisition and rehabilitation of expiring use projects,
- Housing for families with children,
- Housing near employment centers,
- Housing in Qualified Census Tracts and/or areas where community revitalization is a local priority,
- Other as determined locally or by the Department.

Tax credits are awarded on a per building basis. For a particular building to qualify for tax credits, it must be a part of a low income housing "project". To qualify for consideration for credits a project must:

- be residential rental property
- make an election to restrict both rent and income as follows:

  Rent: restrict rents (including utility charges) for tenants in low income units to 30 percent of either the 50 percent area median income as adjusted for family size or the 60 of area median income as adjusted for family size. Rent may be further limited based upon the limitation selected and other representations made in the application to the Department,

  Income: maintain at least 20 percent of the available units for households earning up to 50 percent of area median income as adjusted for family size, **or** maintain at least 40 percent of the available units for households earning up to 60 percent of area median income as adjusted for family size,
- maintain habitability standards,
- if the project involves rehabilitation, there must be expenditures of at least $3,000 per unit or 10 percent of the unadjusted basis of the building, whichever is greater, and,
- operate under the program's rent and income restrictions for a minimum of 15 years for projects placed in service before 1990 and for 30 or more years for later projects pursuant to extended use agreements.

To apply for tax credits, a developer must submit a detailed proposal to the Department on the form prescribed. The specifics of the application contents are available through the Department and generally are the following:

- Description of the housing project proposed, including the total number of units and the number expected to be LIHTC units
- Sources and uses of funding
- Development costs

- Operating expenses and income
- Project need, market and resident services
- Other information as identified in the application

The Department application process was created in accordance with the requirements of Section 42 of the Internal Revenue Code to select proposals for tax credits awards. The application process is more fully described later in this document. The Department may not award more credits to a project than are required to make the project financially feasible. In evaluating projects, the Department must consider any proceeds or receipts expected to be generated through tax benefits, as well as the reasonableness of development hard and soft costs. In general, the IRS expects the Department to compare the proposed project's development costs with the non-tax credit financing, both private and public. The difference between the costs and the sources to finance the costs, is the financing gap. Tax credits may be used, subject to allocation requirements of the QAP, to attract the equity investment to fill this gap.

Once credits have been awarded to a developer, the developer typically sells the credit to private investors. The private investors use the credits to offset taxes otherwise owed to the federal government. The money private investors pay for the credits are paid into the project as equity financing. This equity financing is generally used to fill the gap between the development cost of a project and the non-tax credit financing sources available, such as mortgages, that could be expected to be repaid from rental income.

Owners must place the project in service no later than December 31 of the allocation year (for competitive projects), unless a Carryover allocation is obtained. If a Carryover allocation is obtained, the project must be placed in service no later than December 31 of the second year following the original allocation. Investors can claim the credits for each year of a ten year period (called the "credit period") as long as the project is **operating in accordance with the representations made to the Department in its application for credits and in accordance with IRS regulations.** Individual and corporate investors attach an IRS Form 8609 (initially obtained from the Department), "Low Income Housing Credit Allocation Certification" to their income tax returns when they claim the credits.

Once a project has been placed in service, the Department is responsible for monitoring the project for compliance with state and federal requirements concerning household income, rents, project habitability, resident services and other requirements as represented in the application, Declaration of Land Use Restrictive Covenants and other agreements. If noncompliance is discovered, the Department must report the event of noncompliance to the IRS and if the non-compliance is not corrected, the IRS may recapture or deny credit for previously used or issued tax credits. The IRS issues regulations on monitoring requirements that the Department follows. These regulations are described in the Tax Credit Compliance Guidebook (available from the Department upon request).

Summary

The LIHTC encourages increased affordable rental housing for low income populations by requiring

that project owners adhere to below market rents and tenant income restrictions in exchange for an award of a reduced federal income tax liability.

Administrative Procedures

Year *2005-2006* Tax Credit Program

For each year 2005 and 2006, the Department will award approximately $6.0 million in per capita tax credits. A set-aside of 25% of the per capita tax credits will be allocated ~~of~~ for expiring use projects, projects where at least 25% of the project's units are established as federally rent subsidized (see Targeted Set Asides).

Timetable

In each calendar year, the Department will hold one application round for forward allocation of tax credits and one application round for current year tax credits. The bulk of tax credits will be forward allocated through the Fall Consolidated Funding Cycle application.

The application for the balance of credits, current ear tax credits that have not been forward allocated, will be allocated in the Spring Consolidated Funding Cycle application round.

All applications for the Low Income Housing Tax Credits must be in the format as prescribed by the Department. This is available by contacting the Department at 503.986-2054, or viewing the application at the department website (www.oregon.gov/OHCS/).

Plan Overview

Oregon's Low-Income Housing Tax Credit Qualified Allocation Plan (QAP), establishes the administrative process governing the allocation of federal housing tax credits to qualifying developments that address low income housing priorities throughout the state. This process will be described on the following pages, and will cover the following topics:

- General Administrative procedures
- Application process
- Allocation procedure
- Policies specific to LIHTC

General Administrative Procedures

The QAP utilizes housing priorities pertinent to Oregon as designated by the State of Oregon Consolidated Plan (CP), local jurisdiction Consolidated Plans, or their successor documents in accordance with Department of Housing and Urban Development's (HUD) unmet housing need for the application period, and other information that can demonstrate verifiable housing and community needs and priorities.

Projects which receive Low-Income Housing Tax Credit Allocations will be constructed and rehabilitated in accordance with the Department's architectural standards as well as all applicable local, state and federal laws, local ordinances and building codes. Tax credits will not be awarded

without the Department's architectural review and design concurrence. If published Department architectural standards are met, (please refer to the most recent version of the CFC application, multi-family rental housing risk sharing program applications, and elderly and disabled application and/or any additional program materials adopted or used by the department, for current architectural standards) the Department may award non competitive tax credits without final Department architectural review at the Department's discretion. If Department architectural standards are not met, the Department will enter into a dialogue with the project sponsor to determine how and if these variations from standards are appropriate.

Program requirements also include, but are not limited to, the Federal Fair Housing Act Amendments of 1988, which provide specific guidelines for multi-family dwellings with respect to minimum accessibility, adaptability and prohibition of discrimination. Project sponsors will be required to obtain a preliminary certification as in Exhibit B from their architect, which must be included on the architectural drawings indicating that the project design meets local, state and federal laws, local ordinances and building codes. At the end of the construction period, an "As-Built" architectural certification in Exhibit B will be required before the Department releases "Low-Income Housing Credit Allocation Certification," IRS Form(s) 8609**. The Department assumes no responsibility to inspect developments for compliance with the above-stated construction standards and laws.** Department staff will retain the right to visit developments during the construction period, and sponsors must provide access to the development following a 24-hour notification.

Application

During the application process, all applicants for tax credit reservations must supply documentation in accordance with specific application requirements. All materials must be complete and delivered to the Department by the established deadlines.

Pursuant to amended IRC Section 42, credits reserved for a project may not exceed the amount necessary for the financial feasibility of the project and its viability throughout the credit period. As mandated by IRC Section 42, a project evaluation will be made for each complete application received by the Department, and further evaluations will be conducted for tax credit reservation recipients as they proceed through the allocation process as a means to verify eligibility and the need for the credit allocation.

This Allocation Plan was written to adhere to the established evaluation criteria and preference categories mandated by the federal tax credit program regulations (Section 42), as amended (both proposed and final). All applications will be reviewed under a similar evaluation process. This process is described in the Department's Consolidated Funding Cycle application, 4% Credit Application or any potential RFP. Offers to reserve competitive tax credits will be presented to those projects that receive the highest ranking in accordance with the evaluation process. Offers to reserve noncompetitive tax credits will be presented to those projects that meet all Department and federal criteria of award.

Targeted Set-asides

The Department may, from time to time, establish targeted, discretionary set-asides for projects which target specific low-income housing needs or which have certain designated characteristics. These set-asides will be designated in advance as a priority for the Department and will be described in the Consolidated Funding Cycle application or through an advertised Request for Proposals**. If, in response to applications for a discretionary set aside, the Department is not able to fully allocate to viable applications the amount of credits designated, the Department may allocate the remaining Housing Credits to other qualified Projects which, in its judgement, best achieve the general purposes of the LIHTC Program. Applications under the discretionary set-aside must meet all application criteria.**

The Department will maintain the IRS required non-profit set-aside of 10% and the Department discretionary 15% set-aside for USDA Rural Development funded Rural and/or Farmworker projects and 25% set aside for preservation projects. The set-aside for Rural and/or Farmworker projects may be taken advantage of without Rural Development funding in the project as long as the project states a specific preference for a Farmworker population within the context of The General Explanation of the Tax Reform Act of 1986 (H.R. 3838, 99th Congress; Public Law 99-514 (dated 5/4/87)). Preservation projects include but are not limited to those federally financed existing projects where at least 25% of the existing project's units have project based rental assistance or are expiring LIHTC projects which are currently offering rents below market. Projects participating in, but not limited to the following programs, are considered federally financed: USHUD, USDA Rural Development and the Federal Low-Income Housing Tax Credit programs. Preservation projects also include projects participating in programs that include the replacement of existing affordable housing units including the HOPE VI program.

In 2000, the Department entered into a Memorandum of Understanding with USDA Rural Development. This Memorandum is attached as Exhibit E. If maintaining the targeted USDA Rural Development funded, Rural and/or Farmworker set-asides in the Department's judgement jeopardizes the ability to effectively allocate credit, the Department may at its discretion eliminate or reduce the set-asides and only adhere to the federally-mandated level for tax-exempt organizations.

Decision Making

All LIHTC applications are reviewed by the Department staff for completeness and eligibility. Projects that pass staff review are presented to the Department's Senior Management. The recommendation of Senior Management is forwarded to the Department Director for approval. Projects seeking additional Department funds may also require Department Senior Management approval and/or State Housing Council approval. Projects are not considered awarded credits until a Reservation and Extended Use Agreement, and where applicable, a Carryover Agreement (for competitive credits) is executed between the project sponsor and the Department. These above mentioned documents are included by reference in the Declaration of Land Use Restrictive Covenants, which establishes the actual LIHTC award and is executed and recorded prior to issuing the IRS 8609 forms. The Reservation Agreement will lock the applicable credit percentage rate

(applicable rate) and must be fully executed subject to conditions of the offer letter for a competitive credit project or in the month in which the bonds are sold for a tax-exempt financed project. Failure to lock the rate at either of these points in time will postpone the rate lock to the Placed in Service date.

The state established selection criteria to be used by the Department in its decision making for credits covered by this document will include but is not limited to:

- context of affordable housing in the community, proximity to services and amenities appropriate to the tenant population, access to transportation, etc
- housing needs characteristics (as defined by a third party market study conducted after a reservation of credits has been made)
- market considerations (see market study policy described herein)
- affordability as compared to market rate (preference for projects with affordable rents that are at least 10% below market rents)
- the financial health of the sponsoring organization (based upon annual audited financial statements)
- project characteristics in relation to the population to be housed
- consistency with Department architectural and design guidelines
- sponsor characteristics, capacity to carry out affordable housing development and compliance
- past compliance record, past development record and quality of completed projects
- proposed management agent record of performance
- participation of local tax-exempt organizations
- housing for families with children
- housing in Qualified Census Tracts and/or areas where community revitalization is a local priority
- achievement of a jobs/housing balance
- achievement of community goals for livability
- achievement of goals articulated in the state or local Consolidated Plan
- tenant populations with special housing needs, and
- public housing waiting lists.

Each of these items will be evaluated in the context of a given proposal and the feasibility of that proposal to fulfill each item. All tax-exempt bond financed projects requesting an allocation of LIHTC must adhere to the selection criteria as stated in both the QAP and the LIHTC application materials.

Subsection (h)(4) of Section 42 pertaining to projects utilizing tax exempt financing shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan and application materials applicable to the area in which the project is located. **The Department reserves the right to determine, in its sole discretion, whether the Letters of Interest or Intent, Award Letters, or Commitment**

Letters are satisfactory, and whether a lender or investor possesses the financial or other capacity to make a specific loan or investment. A change in the financing source or financing terms after reservation of credits may, in the sole discretion of the Department, result in all or a part of the credits being recaptured or reduced by, or returned to, the Department.

The housing credit dollar amount allocated to each building in a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. In making this determination the Department will examine all aspects of the financial packaging of the application, including but not limited to:

- the sources and uses of funds and the total financing planned for the project,
- any proceeds or receipts expected to be generated by reason of tax benefits,
- the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and
- the reasonableness of the developmental and operational costs of the project. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

Amendments & Appeals to the Qualified Allocation Plan

Upon approval of the overall plan by the Department, the State Housing Council and the Governor, the Department may make minor and technical amendments to this Allocation Plan when changes are necessary to administer the Low-Income Housing Tax Credit Program to effectively serve Oregon's low-income housing needs, and to conform with amendments to IRC Section 42. Major amendments to the QAP require formal approval and a public process.

If any provision of this Allocation Plan (and documents included herein by reference) is inconsistent with the provisions of amended IRC Section 42, including any future amendments thereto, or any existing or new State administrative rules governing the LIHTC Program, the provisions of IRC Section 42 and/or the State Administrative Rules take precedence and the plan will be amended accordingly.

Public Comment and Hearing Requirements

The Draft Qualified Allocation Plan is subject to a 30 day public comment period. Opportunities to review the Draft QAP are announced via mailing to interested parties, Department stakeholder mailings, and an announcement(s) published in the *Oregonian* Newspaper. The Department accepts written and oral comments.

The State Housing Council approved the revised plan contained herein on April 30, 2004. Public

hearings were held on March 16 and 18, 2004, after appropriate notice was provided.

Annual Credit Available: Per Capita Authority

The State's per capita tax credit authority, and any amounts of credit returned to the Department, are allocated on a competitive basis, based upon project ratings determined during the Consolidated Funding Cycle (CFC) application period(s) or special RFP solicitation. Credit awards may also be available from the State's share of the National Pool. All LIHTC allocations, including any increase in the allocation of a project's per capita credits, will be governed by this plan.

Annual Credit Available: Projects Financed with Tax Exempt Bonds

Credit for buildings financed by tax-exempt bonds subject to volume cap will be determined as per Section 42(h)(4). If 50 percent or more of a project's aggregate basis of buildings and land are financed with tax-exempt bonds, the project may receive a maximum 30 percent present value credit calculated against the project's qualified basis without causing a reduction in the State's annual credit authority. Sponsors of projects financed by tax-exempt bonds must make application for tax credits, and such projects will be evaluated in a manner consistent with the competitive credits. These projects will be subject to project evaluations. Consideration will be given to the sources and uses of the funds, any proceeds generated by reason of tax benefits, the total financing planned for the project, and the percentage of the housing credit dollar amount used for project costs other than soft costs. Provided the Department approves the sponsor's application, a Tax Credit Determination letter will be issued stating the amount of credit available to the project, and a Reservation and Extended Use Agreement will be executed.

Tax credit applications for projects finances with tax-exempt bonds may be filed **at any time during the year**. Sponsors must allow reasonable time for review and response (generally 90 days for review and recommendation). Projects financed with tax-exempt bonds seeking the 4% tax credit will be denied if the criteria outlined herein and presented in the required application are not met to the Department's satisfaction.

Reservation and Extended Use Agreement: Extended Use Period

An executed Reservation and Extended Use Agreement shall be required for **all** tax credit allocations. Projects are not considered to have credits reserved until a Reservation and Extended Use Agreement is executed between the project sponsor and the Department. The Reservation and Extended Use Agreement shall specify, among other things, a minimum applicable unit fraction defined by IRC Section 42 (c) (1)(B) and the rent formula to be maintained for the Project to continue to qualify for Housing Credit.

An executed Reservation and Extended Use Agreement shall be enforceable in any State court by any individual who qualified for occupancy by virtue of the income limitation set for such buildings; shall be binding on all successors of the Applicant; and the Declaration of Land Use Restrictive Covenants shall incorporate the Reservation and Extended Use Agreement and shall be recorded pursuant to State Law as a restrictive covenant.

The Housing Credit allocation may not exceed the amount necessary for the financial feasibility of those units of the Project represented by the applicable fraction at the restricted rents specified in the Reservation and Extended Use Agreement. The Reservation and Extended Use Agreement shall include a commitment to meet the applicable fraction and rent restrictions for at least 15 years beyond the initial 15 year compliance period, or for the term of affordability (see page 31 of the QAP) and may postpone for a specific time the project owner's rights under IRC Section 42 (h)(6) to terminate the commitment.

Application Process

Introduction

The Department has two application processes for the award of LIHTC. One is required for the per capita competitive credit and the other is required for tax-exempt bond financed projects seeking the non-competitive 4% credits. Both applications request identical information in most respects. Where differences exist between the processes, the specific difference will be called out and explained, otherwise, the information below should be considered to be applicable to both processes.

At its discretion, the Department from time to time, may request proposals for applications outside of the normal application process for specifically identified and recognized affordable housing needs.

Basic Eligibility and Considerations for all Applicants

In order to be eligible to receive an allocation of LIHTC, a project must be considered a "qualified low income housing project". To meet this test, a project must consist of **residential rental property.** For the purposes of Section 42, the definition attributed to "residential rental property" is generally the same as applied to tax-exempt rental housing bonds. This definition focuses on the following issues:

- Residential rental properties must include separate and complete facilities for living, sleeping, eating, cooking and sanitation. Unlike the requirements for units financed with tax-exempt bonds, certain single room occupancy housing used on a non-transient basis may qualify for the credit even though such housing may provide eating, cooking and sanitation facilities on a shared basis.
- In addition to actual residential units, functionally related and subordinate facilities may be included in eligible basis if they are available to all tenants with no additional fees attached to them.
- A scattered site project may be treated as a single project if **all** units in all buildings are rent-restricted. This includes buildings which would (but for their lack of proximity) qualify as a project for the purposes of Section 42, are owned by the same party, have a management plan pre-approved by the Department, and are financed under a common plan of financing.
- If a building consists of both residential and nonresidential areas, the nonresidential portion will not preclude the residential portion from qualifying for credit. Determinations will be made on a reasonable basis to ensure that the costs for the commercial use portion of such a mixed-use

building are not in the credit computation. "Community Services Facilities" can be used to generate credit if the facility is designed to serve primarily low income individuals whose income is 60% or less of area median income and the facility does not generate in excess of 10% of the total eligible basis.

- Residential rental units must be available for use by the general public in a nondiscriminatory manner. The Department of Housing and Urban Development (HUD) provide definitions and authority regarding public use and discrimination.

In addition, for a project to qualify for a credit award, it must meet a minimum low income set aside requirement. The minimum set aside requirement must be met no later than the close of the first year of the credit period for such building.

A building owner must elect and fulfill one of the following low-income set asides:

- **the 20/50 test**: at least 20% of the units must be both rent restricted and occupied by tenants with incomes at or below 50% of area median income as adjusted for family size (as determined by HUD)
- **the 40/60 test**: at least 40% of the units must be both rent restricted and occupied by tenants with incomes at or below 60% of area median income as adjusted for family size (as determined by HUD)

The minimum set aside is the election that commits the building owner to a specific income level that will serve to define low income for that building. Under a 20/50 election, an owner that claims 100% of units as eligible for LIHTC must rent all units to households at or below 50% of area median income as adjusted for family size in order to claim 100% of the credit.

Projects previously awarded credits that are currently in their initial compliance periods for pre-1990 projects and in their extended use period for post-1990 projects, will not be eligible to apply for additional credits until the extended use period is over unless the additional credits will provide a clearly demonstrable benefit to the tenants (beyond that promised in the original application).

Projects with serious construction or construction material concerns may be eligible for additional credits within the restrictions of Section 42 and at the discretion of the Department.

Eligible Applicants

There are no restrictions on who may apply to the Department for an allocation of LIHTC. However, please refer to Allocation Procedures under Sponsor Characteristics to determine eligibility.

Documentation of Discretion

OHCS may, at its discretion; award credits in a manner not in accordance with the requirements of the Qualified Allocation Plan. Should an award be made that is not in accordance with the requirements of the Qualified Allocation Plan, OHCS must document this allocation in writing to the general public.

Application Period

Applicants for annual per capita competitive credits must submit a complete Application for Low-Income Housing Tax Credits during the specified application periods within the Department's Consolidated Funding Cycle, or as announced by any request for proposals. For projects financed with tax exempt bonds, applications can be received at any time as long as costs have been, or will be, incurred in the calendar year of application.

Application Protocol: Competitive Credits

Project information must be submitted to the Department at each stage of the allocation process as follows:

1. Initial Application (initial request for LIHTC award, application must be complete to be considered): An application fee of $25 plus $5 per unit to be considered in the applicable fraction must accompany the Initial Application. There shall be no refund of application fees.

2. The applicant must acknowledge acceptance of the Department's offer to Reserve Tax Credits (made after review of the initial application).

3. Any increase in the annual allocation of tax credits made after the departments offer to Reserve Tax Credits will require payment of a fee equal to 5% of the requested increase in tax credits.

4. Execution of Reservation and Extended Use Agreement will establish the parameters of the LIHTC award regarding rent and income restrictions for the project. A fee equal to 5% of the estimated annual allocation of credits must accompany execution of this agreement.

5. Carryover Allocation (made if the project will not be completed in the year of the tax credits allocation): An application for a carryover allocation must be submitted by December 1 of the year of the tax credit allocation and include all required documentation. However the time for meeting the 10% test and submitting related documentation, will be the later of six months after the date of carryover allocation, or December 31 of the tax credit allocation year. If the owner has not secured title to the land, nor the land is otherwise neither secured or encumbered for the duration of the period of project affordability, the applicant must continue to maintain site control until the time required for meeting 10% of the reasonably expected basis**. Please contact Oregon Housing and Community Services to obtain the carryover application materials required to apply for a carryover allocation.**

6. Placed-In-Service/Final Application: (Once the project has received its Certificate of Occupancy by the local jurisdiction, the equivalent local approval for occupancy, or for acquisition and rehabilitation projects, the date of the completion of the rehabilitation).

7. Execution and recordation of a Declaration of Land Use Restrictive Covenants.

8. Release of IRS form 8609.

Cost certifications prepared by a third party tax professional such as a Certified Public Accountant or Tax Attorney will be required from all applicants at the time of the Carryover application (i.e., for the 10% test). A cost certification is required with the Final application, as well.

Applications shall include but not be limited to the requisite supporting data listed below (under Application Requirements) and completion of all forms requested by the Department. Applicants must pay the required Department fees as set forth in the application format at each stage of the application process. The Department will have the authority to request additional information from the applicant as necessary. Incomplete applications will not be accepted.

Sponsors who have received credit reservations may request additional credits subject to the Policy on Applications By Sponsors Who Request Additional Tax Credits After Initial Award. If the Department approves the award of additional credits, developer fees will be held to the same dollar amount as reflected in the initial application.

Application Protocol: Non-Competitive Credits Issued in Conjunction with Tax-exempt Financing

As a means to ensure that all projects requesting credits in conjunction with tax-exempt bonds are eligible for and have no serious deviation from the QAP, project information must be submitted to the Department at each stage of the allocation process as follows:

1. Provide a copy of any application, pre-application or proposal materials submitted for review to the tax-exempt bond issuer. The Department reserves the right to provide comment to the bond issuer regarding the use of LIHTC in conjunction with tax-exempt bonds. These comments will be restricted to eligibility for LIHTC based upon criteria outlined in the QAP.

2. Initial Application (initial request for LIHTC award, application must be complete to be considered): An application fee of $25 plus $5 per unit to be considered in the applicable fraction must accompany the Initial Application.

3. Prior to allocation of bonds from the State of Oregon Private Activity Bond Committee (PABC), an initial application for 4% Low Income Housing Tax Credits must be received and reviewed by the Department. Department comment to the PABC on all tax-exempt bond/4% LIHTC proposals is required prior to bond issuance. These comments will be restricted to eligibility for LIHTC based upon criteria outlined in the QAP.

4. The Department may provide written comment regarding the 4% LIHTC application to the bond

issuer prior to final approval of the tax-exempt bonds.

5. Complete applications with adequate materials for evaluation will be heard by the Department Finance Committee for recommendation to the Director.

6. Upon receipt of Finance Committee recommendation and Department Director approval, an Offer to Reserve Tax Credits will be made. Acceptance of this offer must be acknowledged by the applicant within thirty days of its receipt.

7. Execution of Reservation and Extended Use Agreement will establish the parameters of the LIHTC award regarding rent and income restrictions for the project. A fee equal to 5% of the estimated annual allocation of credits must accompany execution of this agreement.

8. Ongoing project monitoring and progress reports are due during the construction and lease up phases of the development

9. Placed-In-Service/Final Application: (Once the project has received its Certificate of Occupancy by the local jurisdiction, the equivalent local approval for occupancy, or for acquisition and rehabilitation projects, the date of the completion of the rehabilitation). IRS Forms 8609 are released after an executed Declaration of Land Use Restrictive Covenants is recorded against the property.

Cost certifications prepared by a third party tax professional such as a Certified Public Accountant or Tax Attorney will be required from all applicants at the time of the Final application.

Applications shall include but not be limited to the requisite supporting data listed below (under Application Requirements) and completion of all forms requested by the Department. Applicants must pay the required Department fees as set forth in the application format at each stage of the application process. The Department will have the authority to request additional information from the applicant as necessary. The Department, at its sole discretion, also may require the payment of a review fee. In determining whether or not to charge such an additional review
fee, and the amount thereof, the Department may consider factors including, but not limited to the following: (a) the Department's actual or projected costs in reviewing an application for tax credits and the project related thereto; (b) the extent of underwriting scrutiny performed or deemed necessary by the Department; (c) the amount and nature of staff resources utilized or projected for researching or reviewing a proposal; and (d) the amount and nature of outside resources utilized or projected for researching or reviewing a proposal.

Incomplete applications will not be accepted. Sponsors who have received credit reservations may request additional credits if there is a justifiable increase in project costs, which is directly related to the project's Eligible Basis. If the Department approves additional credit requests,

developer fees will be held to the same dollar amount as reflected in the initial application.

Application Requirements: Both Competitive and Non-Competitive Credits

A. Application for Offer to Reserve Tax Credits shall include but not be limited to:

1. Complete application form, as prescribed by the Department for the type of credit being requested, including, but not limited to:
   a. Complete, detailed breakdown of estimated project costs;
   b. The amount of credit requested, qualified basis calculation, elections made by the Project owner under Section 42 and a complete breakdown of the anticipated proceeds from the sale of tax credits;
   c. Confirmation of proposed subsidies (e.g., Trust Fund, HOME, CDBG, FHLB, local funding sources, etc.);
   d. Implementation schedule, including planning, construction and lease-up;
   e. Complete summary of sources of funds for project;
   f. Pro forma Operating Statement with corresponding assumptions and justifications;
   g. Documentation substantiating utility allowance calculations;
   h. Preliminary Financing Proposals; and
   i. All application materials and questions must be complete, factual and legible.

2. Description of project, including discussion explaining community need. An independent third party market analysis may be required for all projects receiving a reservation. The Department reserves the right to verify all market information.

3. Legal description of site.

4. A detailed location map, as outlined in the application.

5. Site plan and preliminary architectural plans, as described in the application materials.

6. Evidence of initial site control (e.g., purchase agreement, option, land sale contract, evidence from the local government demonstrating their intent to transfer property).

7. Evidence project is in compliance with local planning and zoning codes applicable to the proposed use of site or evidence of application for conditional use approval, as required by the local jurisdiction. (Note: Sites requiring zoning variances, or where the use is neither allowed out right or conditionally, will not be accepted.)

8. Resume of development team members.

9. Most recent annual financial statement of the sponsoring organization.

10. Certifications or other documentation substantiating evaluation criteria.

11. Applicable Department fees.

12. Nonprofit Organizations (only) - Articles of Incorporation and IRS documentation indicating tax-exempt status has been granted (IRS Form 1023 for 501(c)(3) organizations, Form 1024 for 501(c)(9), or other organizations).

13. A Resident Services Plan for residents in the proposed Project, including a description of how and why those services are appropriate and how those services will be integrated and administered by management.

14. All application information must be complete, factual and legible.

15. A signed certification by the applicant attesting to the validity of the application materials presented.

16. Completion of IRS Form 8821.

Applications under the CFC process, any RFP process and the non-competitive credit process, will be reviewed and ranked according to an evaluation process (see the next section of this document and most current application package), and projects will be selected to receive conditional offers to reserve tax credits. Upon issuing a conditional reservation, the Department will notify the Chief Executive of the designated jurisdiction where the planned housing development is located.

Those projects receiving a conditional offer to reserve tax credits must comply with all conditions outlined in the Offer Letter within 90 days in order to receive a tax credit commitment. Credit reservations offered to, but not accepted by, the Applicant may become available for distribution to other high ranking Applicant(s). Following the offer to reserve credits; an extension beyond the initial 90-day period may be considered should the Department determine that there are circumstances to warrant this consideration.

The Department may at its discretion, establish a waiting list for projects competing for per capita credits. Projects with high rankings that did not receive an offer to reserve tax credits during the initial application period will be eligible to be placed on a waiting list. Waiting list status expires December 31 of the year for which the project sought a credit allocation (not necessarily the year of the application).

Applications for non-competitive tax-exempt bond financed credits will be evaluated based upon criteria identical to the CFC criteria. While applicants will not be competitively scored there will be an expectation that projects meet basic standards of eligibility and community appropriateness. Non-competitive applicants may resubmit applications with corrections.

B. Requirements for Reservation of Tax Credits shall include:

1. Receipt of all applicable items in A above.

2. All documentation required to evidence compliance with the Reservation Agreement conditions, may include but are not limited to:
   a) Evidence of site control/purchase;
   b) Letter of community support;
   c) Conditional commitment of construction/permanent financing (sufficiency to be determined by the Department);
   d) Architectural plans;
   e) Evidence of compliance with local zoning codes;
   f) Level I Environmental Study; and
   g) Payment of 5 percent Reservation Fee.

NOTE: A Reservation and Extended Use Agreement will be required of all LIHTC applicants.

Applicants for 4% credits in association with tax-exempt bond financing will enter into a Reservation and Extended Use Agreement concurrent to reservation of credits by the Department Finance Committee and meeting any conditions of award. Applicants for 4% credits must enter into the Reservation and Extended Use Agreement no later than 60 days from the date of the Offer Letter or within the month the Bonds are sold. Applicants for credits subject to the state per capita authority will enter into a Reservation and Extended Use Agreement upon satisfaction of conditions of CFC award as they apply to the credit allocation. The LIHTC fee will be due and payable at the execution of the Reservation and Extended Use Agreement in both cases.

C. Request for Tax Credit Carryover Allocation shall include:
NOTE: Applicants for 4% credits in association with tax exempt bonds do not need to meet carryover requirements.

1. Complete Carryover application;

2. Signed Reservation and Extended Use Agreement;

3. Updated summary of development costs, including updated sources and uses, operating and income statements and other financial information the Department deems necessary;

4. Third party certification of incurred project costs to date, reviewed by a certified accountant or legal counsel, which demonstrates to the Department's satisfaction that the expenditure of 10 % of eligible project costs have been met.

5. Certification that the sponsor has purchased the property and ownership is vested in the name of the entity requesting the Carryover Allocation; and

6. Evidence of title to or control of the project site. Control of the site shall at a minimum

correspond in length of time to the period of project affordability.

On or before December 1 (or the next business day) of the tax credit allocation year, tax credit recipients must submit either an application for tax credit "Carryover Allocation" (if the project is still in the construction process), or a final application indicating "Placed-In-Service" (Certificates of Occupancy/Completion have been received and the project is ready for occupancy by tenants). Projects that receive an allocation in the second half of the calendar year have up to six months to meet the 10% test of the Carryover requirement.

D. Application for Tax Credit Allocation (Placed-In-Service Projects) shall include:

1. Final application, including but not limited to:
    a) Certification of all project costs;
    b) Updated Operating Statement;
    c) Certification of use of tax credit proceeds; and
    d) Completed "Final Application Supplement" including documentation of cost changes, updated sources and uses and a 15-year cash flow analysis.

2. Certificate of Occupancy or the appropriate jurisdiction's Final Inspection Report approving occupancy (indicating the project is suitable for occupancy).

3. Recording of a Low-Income Housing Tax Credit Declaration of Land Use Restrictive Covenants.

4. Copy of Cost Certification prepared by a third party such as a certified accountant or legal counsel. Please contact Oregon Housing and Community Services, Housing Resources Section for a sample cost certification format.

5. Certification from the project or inspecting Architect that the project has been built in accordance with the final plans submitted to the Department, i.e., the project is built in accordance with all applicable local, state and federal laws, and those requirements of the Department set forth in this Allocation Plan. (See Exhibit B for format.)

6. Copy of Placement Memorandum, Syndication Agreement or Limited Partnership Agreement indicating tax credit proceeds available to the project together with a contribution schedule.

7. Copy of on-site property management plan acceptable to the Department and permanent lender.

8. A copy of a site map with each building identified by address and listing the units by number to be found in each building.

NOTE: All LIHTC applicants are required to complete a final application. Any changes from

the original application are subject to Department approval. It is strongly advised that this approval be sought prior to or at a minimum in conjunction with submitting the final application. Any change to developer fee from the original application to the final application will require written approval from the Department prior to the final application. Approval will be at the discretion of the Department and will not be unreasonably withheld for justifiable increases in the scope of work, so far as the developer fee does not exceed the Department's approved limitations.

Allocation Procedure

Evaluation Process

All projects, including those competing for set-asides through requests for proposals, and both competitive and non-competitive credit applications, will be evaluated according to a process that includes consideration of the State's low-income housing priorities as designated by the State Consolidated Plan, a local level Consolidated Plan, if applicable, (or successor document(s) to the Consolidated Plan) HUD's unmet housing needs, and/or other information that can demonstrate verifiable housing and community needs and priorities, required under amended Section 42 of the Internal Revenue Code (IRC) and any other information the Department deems pertinent to the selection process as identified in the request for applications. IRC Section 42 specific requirements include consideration of:

A. Project Location;
B. Housing Needs Characteristics;
C. Project Characteristics;
D. Sponsor Characteristics;
E. Tenant Population with Special Housing Needs;
F. Tenant populations of individuals with children;
G. Projects intended for eventual tenant ownership;
H. Public Housing Waiting Lists;
I. Participation by Local Tax Exempt Organizations, and;
J. Resident Services.

Section 42 (m)(B) further states that preference in allocating housing credits be given to:

- projects serving the lowest income tenants, and,
- projects obligated to serve qualified tenants for the longest period of time.

IRC Section 42 also requires a comprehensive market study of the housing needs of the low-income individuals in the area served by each housing credit project. The study must be conducted at the developer's expense before the credit allocation is made. A disinterested party approved by the allocating agency must conduct the study. Department required information includes:

Market Assessment and Target Population Needs

- Documented market description
- Documented analysis of market trends

- Measurable differences in proposed rents and market rents (preference for a minimum of 10% below market rents)
- Evaluation and understanding of the local affordable housing need
- Housing gap addressed
- Compliance with the Consolidated Plan
- Impact on existing affordable housing developments

Affordable Housing Solutions

- How the solution is appropriate for the population to be served (amenities, unit sizes, special features, etc.)
- Extent to which rents in the project are lower than market rents for the area
- Period of affordability (extensions beyond the minimum program requirements)
- Project location to services (commercial and social) and appropriateness of site
- Solution meets program funding requirements of housing credits and other subsidies
- Whether units are to be rented to households with net incomes not exceeding two times the monthly rent.
- Project location in relation to employment opportunities

Resident Services

- Method used to identify the specific service needs of the target population
- Description of proposed services including projected results in measurable terms
- Extent of collaboration and coordination of ongoing services after project completion

Community/Neighborhood Support

- Community awareness of the project as demonstrated by public or neighborhood meetings or hearings
- Plan to address community concerns
- Development contributions by the community
- Service contributions by the community that are appropriate to the tenant population

Organizational Capacity

- Capacity of the sponsor/development team in relation to the scale of the project
- Prior project experience of the applicant
- Prior project compliance with program regulations
- Readiness to proceed
- Asset management of existing projects as evidenced by acceptable project compliance monitoring reports
- Organization financial health

Financial Feasibility

- Source of financial estimates
- Reasonableness of assumptions

- Reasonableness of construction and development costs for the community and construction type
- Reasonableness of operating cost
- Grants and tax credit program requirements
- Development fee reasonableness
- Demonstrated need for Department resources

Program Considerations

- Meets specific program criteria
- Minimal impact on existing residential or commercial tenants
- Reasonable request of program resources
- Eligible uses of resources

More specific guidelines and criteria regarding the evaluation of applications can be found in the application format (the Consolidated Funding Cycle and/or the 4% Credit Application and/or the Multi-Family Rental Housing Risk Sharing Program and Elderly and Disabled Loan Program Applications and/or any additional program materials adopted or used by the department).

The above evaluation criteria are presented as considerations the Department makes for each LIHTC proposal. Because each project is so unique, there is no set standard for the criteria; rather, each is considered in the context of the given proposal.

"Threshold" Criteria

The Department has adopted "thresholds" to insure that the funds available are given to projects best able to produce housing in a timely manner.

LIHTC applications will be reviewed for compliance with the following four "thresholds". The bond-financing threshold is applicable only to 4% credit applications. Applications, which do not meet any or all of the following criteria, will receive a 25-point deduction from their score.

Bond Financing If 50% or more of a project's aggregate basis of buildings and land are financed with tax-exempt bonds, the project may receive a maximum 30 percent present value credit calculated against the project's qualified basis without causing a reduction in the State's annual credit authority. If the project is less than 50% financed with tax exempt bonds, the credits may be claimed only on the portion of the project being financed by tax exempt bonds. Sponsors of projects financed by tax-exempt bonds must make application for tax credits, and such projects must address housing needs set forth in the Qualified Allocation Plan. These projects will be subject to project evaluations and the amount of credit offered to said project will be established by the Department. Consideration will be given to the sources and uses of the funds, any proceeds generated by reason of tax benefits, the total financing planned for the project and the percentage of the housing credit dollar amount used for project costs other than soft costs. Provided the Department approves the sponsor's application, a Tax Credit

Commitment will be issued stating the amount of credit available to the project.

Site Control All applicants must demonstrate site control. Evidence of site control can include: fee simple title, evidence from the local government demonstrating their intent to transfer property, or a contract or agreement demonstrating site control, including an option on the property. Control of the project site for a period of time not less than the time period of project affordability is also acceptable.

Zoning Applicants must attach a letter from the local planning department indicating that the property is properly zoned for the use intended, or the intended use is allowed with conditions and application has been made for a conditional use permit. Under no circumstances will anything other than a letter from the local planning department be accepted as evidence of proper zoning. Projects requiring zone changes or annexations do not meet the threshold.

Site Review and Environmental Review All applicants must complete the Environmental Review Checklist. The Department's Regional Field Representative (RFR) will review the information on the form during the site review. The Environmental Review Checklist is included in the application materials.

Sponsor Characteristics

Sponsors must be able to demonstrate an understanding of the Low-Income Housing Tax Credit Program, and proficiency with housing related development. No sponsors with limited multi-family experience will be excluded from the application process as long as they engage the services of qualified development team members. Additional consideration may be given to program sponsors who have consistently completed their projects in accordance with representations made in their applications, and who are maintaining their project in compliance with tax credit program policies and procedures and federal regulations.

The Department may reject applications from previous program participants who have failed to demonstrate proficiency with the LIHTC Program or other government-sponsored housing programs. The Department may also reject or discount an application from previous program participants who have failed to complete their projects in accordance with their applications and/or certified plans presented to the Department or other public or private allocating agencies, or who have failed to effectively utilize previously allocated tax credits, or who have been found to be in chronic non-compliance with program rules as evidenced by Department or other public or private allocating agencies project monitoring.

Capacity of previous program participation includes but is not limited to the past performance of any member of the development team, claims with contractor board and other considerations as deemed appropriate at the sole discretion of the department.

Financial Feasibility

Tax credits for a project may not exceed the amount necessary for the financial feasibility of the

project. Financial feasibility analysis will include a comparison with current market costs and an assessment of the reasonableness of projected cost components and operating expenses. The Department's project evaluation will utilize common lending standards and underwriting criteria for evaluating multi-family projects. Basic criteria includes but in not limited to:

- **Primary** Debt Service Ratio is recommended to be no lower than 1.15 (1.10 for Rural Housing Service Developments) until initial stabilized occupancy and no higher than 1.20 (unless accompanied by an explanation.) OHCS will consider vacancy rates, ability to raise rents and historic operating cost escalations typical in the marketplace in determining debt coverage before and after initial stabilized occupancy. Repayment of must pay debt, e.g., principal amount of deferred developer fee, may increase primary debt service ratio.
- Maximization of Loan to Value ratios and documentation thereof from the project lender.
- Construction hard costs per square foot are consistent with industry standards for similar projects unless adequately justified by community constraints or building type.
- Developer fees in accordance with Department policy (as stated in the department's application instructions).
- Reasonable operating expenses, as determined by the Department for the project size, type and population to be housed, *including:*
    - Operating reserves of 4 to 6 months operating expenses (minimum). Reserves less than or in extreme excess to this will be approved on a case-by-case basis with justification.
    - Replacement reserves of no less than $250 per unit per year for new construction development for seniors and $300 per unit per year for new construction development for families and rehabilitation developments. These figures are guidelines. A more precise measure of reserves needed will come from a carefully prepared Reserve for Replacement schedule.
    - Itemized operating expense and vacancy rate projections must be provided and supported by reasonable and credible evidence if adequate operating cost and vacancy rate data is not available.
- Acquisition price for acquisition of buildings or land shall be limited to the appraised value as determined by an independent third party licensed appraiser.
- Ability of the project to demonstrate long term viability (minimum of a 15 year cash flow projection.
- Tax Credit pricing at current market rates.

Note: Tax exempt bond projects with funding gaps requesting Consolidated Funding Cycle funds to fill the gaps may be required to apply for these funds during the normal CFC application round.

The Department reserves the right to determine, in its sole discretion, whether the Letters of Interest or Intent, Award Letters, or Commitment Letters are satisfactory, and whether a lender or investor possesses the financial or other capacity to make a specific loan or investment. A material change in the financing source of financing terms after reservation of credits may result in all or a part of the credits being reduced by, or returned to, the Department, if, after evaluation and consideration of all relevant facts, the Department reasonably determines that a reduction or return of credits is required so that the amount of credits allocated to the project does not exceed the amount necessary for financial

feasibility of the project and its viability throughout the credit period.

Architectural/Site Review

In response to a legislative mandate for promoting good quality in the development, design and construction of publicly funded housing, the Department has adopted *Architectural Requirements* for all LIHTC projects. These requirements are minimum standards that apply to new construction and to the renovation of existing structures. They promote long-term livability and the wise use of public investment by addressing Site Design, Building Design and Unit Design issues. The standards and processes are included in the CFC **and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.**

The sponsor and/or architect may request a pre-application conference with the Department before submitting all documents necessary for the formal application.

Changes made to architectural designs after the award or reservation of credits must be documented and are also subject to department architectural approval.

Long-Term Affordability

All projects must commit to an extended use term of a minimum of 30 years of affordability. Projects with tax-exempt bond financing must commit to an extended use term of the greater of 30 years or the outstanding term of the bonds. The owner must file a Restrictive Covenant (provided by Oregon Housing & Community Services) to waive the right to petition the Agency to terminate the extended use term as described in Section 42 of the Internal Revenue Service Code. Additional consideration will be given to projects, which agree to an extended use period beyond the minimum 30 years.

Resident Services

Sponsors, who receive Department resources, including but not limited to LIHTC, must include in their affordable housing development a provision for residents to access services appropriate to the identified needs of the target population. The anticipated outcomes of the resident services plans are:

- Through coordination, collaboration, and community linkages, provide resident the opportunity to access appropriate services which promote self-sufficiency, maintain independent living, and support residents in making positive life choices; and
- To effectively maintain the fiscal and physical viability of the development by incorporating into the ongoing management appropriate services, which address resident issues as they, may arise.

Project evaluation will reward projects offering appropriate resident services. Sponsors are encouraged to build services provisions into their operating expenses.

Resident services are not intended to be limited to services provided on site, to residents at risk or with special needs, nor does it make participation in services mandatory for residents. It is intended

to be a support system integrated into the housing and available to all residents. Resident services can be incorporated into the operation and management in a variety of ways. Common to many models, however, are the goals of helping residents achieve greater social and economic self-sufficiency and an enhanced quality of life. While service enriched housing offers assistance to residents facing a crisis, it should also focus on addressing problems and linking residents to community resources. The most effective service enriched housing encourages and supports resident participation in the decision making process.

In considering resources available for resident services, sponsors should investigate public and private social service agencies, schools, community directories and consultation with existing community residents. United Way, city or county government, libraries and non-profit agencies often operate resource and referral services. Beyond Shelter, a non-profit agency committed to combating chronic poverty, welfare dependency and homelessness has developed a handbook regarding service-enriched housing.

The required resident services plan is described in the Consolidated Funding Cycle **and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.**

Project Evaluation for Appropriate Credit Amount

After projects are evaluated and ranked in order of their score, they will be presented to Department Senior Management and/or Finance Committee. Senior Management and/or Finance Committee will provide a recommendation to the Director. Non-competitive applications will be evaluated based upon the same criteria, and presented to the Department Finance Committee for recommendation to the Department Director.

Project evaluations will be conducted to determine the appropriate amount of tax credits for which the project is eligible. Pursuant to amended IRC Section 42 of the Internal Revenue Code, the amount of credit available for a project may not exceed the amount necessary for its "financial feasibility." Regulations require that allocating agencies conduct these evaluations at three specific times to determine the amount of applicable credit:

A. Upon receipt of the **Consolidated Funding Cycle Application, or Initial 4% Credit Application;**
B. Prior to providing a Tax Credit **Carryover Allocation** (for competitive, per capita credit requests); and
C. No earlier than 30 days prior to issuance of **IRS Form(s) 8609.**

During each evaluation, the Department will determine the amount of credit to be reserved committed or allocated by considering the following components of each project:

1. Total project costs.
2. Funding sources available to the project:
   a) Loans

b) Grants
c) Tax Credit Proceeds - (The Department will use current market guidelines, as well as sponsor representations, to estimate proceeds anticipated from the sale of tax credits. A copy of the Placement Memorandum or Syndication Agreement must be provided to the Department no later than the date upon which the sponsor applies for Placed-In-Service allocation. If said document has not been finalized, a draft Placement Memorandum or Syndication Agreement or Limited Partnership Agreement will be acceptable.
d) When actual tax credit proceeds are determined, there may be an adjustment to the credit reserved or committed. Credit will not be increased beyond the amount originally reserved unless application amendments are submitted and the request meets the Policy on Applications by Sponsors Who Request Additional Tax Credits after Initial Award policy included in this QAP (see page 39). In the case of non-competitive credits, the request is reviewed and approved by the Department Finance Committee. If actual project costs or funding sources differ substantially from the projections submitted in the application, the Department may reduce the final credit allocation or the Owner may establish project reserves to offset the deficit for allowable purposes. The conditions for such reserve accounts will be determined on a case-by-case basis, and must be approved by the Department.)
e) Owner Equity - (Owner equity is often in the form of deferred developer fees.) Developer fees may not exceed 15 percent of total project cost per the developer fee policy described later in this document. The Department requires full disclosure of all fees paid to parties related to the sponsor and/or developer. The developer fee shall include developer overhead, profit, and consultant fees for services normally performed by the developer.)

3. Percentage of the housing credit dollar amount used for hard costs (actual construction costs, including builder and contractor's fees).
4. Projected operating income and expense, 15-year cash flow and tax benefits.
5. Maximum tax credit eligibility - (Additional eligible basis will be considered for projects located in HUD's designated "Difficult to Develop Areas" and "Qualified Census Tracts," if deemed necessary for the viability of a project by the Department. An evaluation process that examines the financial feasibility and public purpose of a given project will limit the amount of tax credits allocated to a project.).
6. Debt Service Coverage Ratio.
7. Project reserves - (Four to six months operating reserves at a minimum. Reserves less than or in extreme excess of this will be approved on a case-by-case basis. Considerations will be made for lender and equity investor requirements.).

Project costs will be evaluated against Department criteria and industry cost standards, as well as average costs from competing projects. The Department may request substantiating documentation. Projects with excessive costs will be subject to adjustment by the Department.

When making a reservation of LIHTC the department reserves the right to decide whether a project

will receive an allocation from the current year credit ceiling or an allocation from the following year's credit ceiling (forward allocation). This decision shall be based on factors including, but not limited to, the project's readiness to proceed and the likely timing of a project's ability to satisfy the 10% of expected basis test. OHCS reserves the right to exchange a current year allocation with a future's year credit allocation if it is at risk of not allocating all of its current year credit ceiling.

Allocation Limitations

During the application process, the following limitations shall apply:

- The per capita tax credit cap for projects will be $700,000 in annual credits. Project sponsors, developers, or any "related entity" (An entity is a "related entity" if a relationship exists between the sponsor or developer and such entity which would result in the disallowance of losses between related persons under Sections 267 or 707(b) of the Internal Revenue Code of 1986 as amended.) utilizing Oregon's Low-Income Housing Tax Credit Program must comply with this ceiling. The $700,000 project ceiling may be waived if sufficient applications are not received and approved to utilize the full amount of credits available. The $700,000 may also be waived for a project accessing credits outside of the competitive process (i.e. in conjunction with tax-exempt bond financing).

- Tax Credit Offers to Reserve and/or Carryover Allocations may not be transferred without Department approval. For projects with a nonprofit sponsor applying for the 10% nonprofit set-aside, it is required that the nonprofit applicant(s) materially participate in the development of the project. Any changes in General Partner status without the consent of the Department may result in forfeiture of the Offer to Reserve or Carryover Allocation. (Material participation is described later in this document.)

- The Department will diligently enforce all agreements, warranties and representations of the sponsor regarding the project, especially those made in the Initial Application as well as those made in the Reservation and Extended Use Agreement. Failure to perform or demonstrate progress may jeopardize the reservation for Carryover Allocation, tax credits previously awarded, and potential future allocations.

- Tax Credit Reservations are made based upon representations in sponsor applications. Once a Reservation and Extended Use Agreement has been offered or executed, written approval for any changes to the project must be obtained from the Department. This approval shall be made in a timely manner and will not be unreasonably withheld. Changes requiring such approval include but are not limited to:
    - Changes in the project's composition may be approved provided the project continues to maintain an evaluation ranking equal to or greater than those awarded to the original project. A re-evaluation of the project is necessary if there are material changes to the project scope. Applicants will be required to submit an amended application, and an additional application fee may be required.
    - Composition of the partnership.

- Lender/Equity Investor Changes.
- Changes in the unit mix or number of units.
- Changes in cost.
- Changes in management agent.
- Any others the Department in its discretion deem to be substantive changes.

- No executive, employee or agent of the Oregon Housing and Community Services Department or any other official of the State of Oregon, including the Governor thereof, shall be personally liable concerning any matters arising out of, or in relation to, the allocation of Low-Income Housing Tax Credits, or the approval or administration of this plan.

Documentation Requirements for Projects Awarded Credits

Once credits have been offered to a project, the following documentation will be required:

- Reservation or Determination letter will be sent to the applicant and an acknowledgment of the reservation by the applicant will be returned to the Department.
- Reservation and Extended Use and Hold Harmless Agreements will be executed between the Department and the applicant.
- Tax Credits fees are due and payable.
- Monthly Progress Reports will be required.
- An approved Carryover Application and Agreement for projects receiving competitive credits that will not be placed in service in the allocation year.
- An approved Final Application and executed Declaration of Land Use Restrictive Covenants will be required prior to the release of the IRS form 8609 by the Department.

Project Denial

The Department reserves the right to disapprove any application for tax credits if, in its judgment, the proposed project is not consistent with the goals of providing decent, safe and sanitary housing for low-income persons as set forth in the Department's enabling legislation or the project does not meet the requirements of IRC Section 42 as amended, all regulations promulgated thereunder, and/or polices and preferences stated in the Qualified Allocation Plan. The Department may impose additional conditions on project sponsors for any project as part of the credit reservation process.

Revocation or Reduction of Housing Credit

The Department may revoke an offer of a credit allocation or may terminate a Reservation and Extended Use Agreement if the Department determines that:

- the proposed project owner will not obtain a construction loan or building permit, or close its equity agreement in a timely manner;
- the proposed project has not made adequate progress toward Carryover requirements;
- the proposed project will not be placed in service by the date mutually agreed upon;
- the proposed project financing is not committed as indicated;
- the applicant has submitted misleading or false information in the application to obtain

funds or in other correspondence with the Department;
- the project does not fulfill the representations made in the application and no attempt to contact the Department to describe the situation has been made;
- or other just causes at the Department's discretion.

The Department may reduce the allocation amount identified in the Reservation and Extended Use Agreement prior to the issuance of the Declaration of Land Use Restrictive Covenants or Form 8609 if:

- upon analysis, the amount of credit originally assumed appropriate is in excess of the amount needed for financial feasibility,
- there has been a reduction in basis,
- the tax credit rate has changed since the original application and the rate was not locked at the Reservation and Extended Use Agreement.

The Department may revoke a reservation of credits if the Department, in its discretion believes (based on analysis), that more than 10% of the total estimated project costs will not be expended within six months of the allocation date or end of the calendar year in which the Carryover Allocation is made (whichever is later). Furthermore the Department may revoke a reservation of credits if the Department in its discretion believes the project will not be placed in service within two years following the calendar year in which the a Carryover Allocation is made or by the dates mutually agreed upon.

Public Records Disclosure

Sponsors may request and receive a summation from the Department with respect to the evaluation of their specific project application; however, the written evaluation documents and related details of other projects will not be available. ORS 192.502(23) exempts Oregon Housing and Community Services from releasing to the public the following records, communications, and information submitted to the Department by applicants for and recipients of loans, grants and tax credits:

- personal and corporate financial statements and information, including tax returns
- credit reports
- project appraisals
- market studies and analysis
- articles of incorporation, partnership agreements and operating agreements
- commitment letters
- project pro forma statements
- project cost certifications and cost data
- audits
- project tenant correspondence requested to be confidential
- tenant files relating to certification
- housing assistance payment requests

The purpose of ORS 192.502(23) is to protect from public disclosure the detailed personal and

business information that applicants and businesses must submit to the state as a condition of participating in the subsidized housing program.

Policies Specific to LIHTC

Policy on Use of LIHTC for Public Purpose

The legislative history of the LIHTC program provides that residential units must be available for use by the general public. Regulations require that use by the general public be consistent with all applicable federal, state, and local law. The department reserves the right to take any action it deems appropriate if the developer, general partners (or any affiliate), management agent or any other material participant, in the department's judgement, is or has been found to be in violation of any applicable law including, but not limited to fair housing, housing accessibility or nondiscrimination laws. Material participants, but is not limited to, any entity that materially affect, in the department's opinion, the development or the operation of the property.

Departmental remedies may include, but are not limited to, rejection of the LIHTC application, termination of processing, failure to issue an IRS form 8609, or issuance of an IRS form 8823. The department may rely upon its own investigations or other information the department deems appropriate.

Policy on HOME/LIHTC Funding Mix

There are several rules that apply when combining HOME funds (this applies to ANY HOME funds, not simply OHCS HOME funds) with Low-Income Housing Tax Credits. Two of the most common rules are listed below. It is recommended that you work with your tax credit attorneys to determine how these rules would specifically effect your project.

- <u>Including HOME funds in basis</u> If HOME funds are being granted to the general partner in a limited partnership and in turn then loaned to the limited partnership and in order for the HOME funds to be included in basis, one of the following must occur:
  - HOME funds must be loaned to the limited partnership at an interest rate that equals or exceeds the federal applicable rate and the loan must be able to be repaid at loan maturity. The loan can be a deferred payment loan, but the sponsor must demonstrate how the loan and interest accrued will be repaid at its due date.

    OR

  - HOME funds can be loaned at a rate that is less than the federal applicable rate, and remain in basis if at least 40% of the total units (not just the HOME units) **in each building** are occupied by persons whose income is 50% or less of median income and rented at rates affordable to persons whose income is 50% or less of median income.

- <u>130% Bonus Area</u> If the project is located in a hard to develop area or a designated census

tract (130% bonus area), and the project is to receive both the 9% credit and the 130% bonus, then:

- HOME funds must be loaned to the limited partnership at or above the federal applicable rate.

It is highly recommended that project sponsors wishing to combine HOME funds with LIHTC consult their tax accountant and tax attorney for guidance.

Native American Housing Assistance and Self-Determination Act and LIHTC

Native American Housing Assistance and Self-Determination Act funds may be combined with LIHTC and receive a 9% credit if the project requires at least 40% of the total units (not just the HOME units) in **each building** be occupied by persons whose income is 50% or less of area median income and rented at rates affordable to persons whose income is 50% or less of area median income.

Policy on Material Participation by Nonprofit Organizations

For partnerships, turnkey or joint ventures that have as a general partner or co-general partner a local tax-exempt nonprofit organization, the Department expects material participation by the said local tax-exempt nonprofit organization to include, but not be limited to:

- Participation in developer fees and excess cash flows. Favorable consideration will be given to cases where non-profit participation in developer fees and excess cash flow is at least 25 percent. Excess cash flow will be defined here as cash flow remaining after contractual and/or partnership arrangements for cash flow sharing is taken into account.
- Participation in project oversight and decision making, such as direct involvement in application preparation, direct involvement in discussions for construction, bridge and debt financing, a close working relationship with the property management firm, and tenant selection. The project must demonstrate an ability to further the non-profit's charitable mission and there should be an ability on the part of the non-profit to override any fiduciary duty to the owners when that duty conflicts with the charitable mission of the non-profit.
- Provision of assistance that empowers the non-profit and enables it to gain expertise.
- It is further required that the said non-profit NOT be affiliated with or controlled by a for profit organization.

Material participation of the non-profit **must** be demonstrated if the applicant is applying under the 10% non-profit set aside.

Next Available Project List Policy

A list will be established from projects not funded during the established competitive application process to assist the Department to fully allocate all available tax credits. Projects will be eligible to be on the list only if:

- they were not funded in the most recently past current year's funding round
- they received a score high enough to be considered a viable project
- have not re-applied as a 4% non-competitive project and received a credit award.

The list status expires December 31 of the year for which the project sought a credit allocation (not necessarily the year of the application).

If a funded project cannot meet Carryover, or becomes ineligible for the credits for any other reason, the next available project on the list will be notified. If this project can demonstrate that it can meet Carryover requirements, the project will be awarded credits. Other Department funding sources may also be awarded to activated wait listed projects based upon their availability.

Policy on the Handling of Returned Credits

Annual per capita credits returned after January 1 and prior to October 1 of any given year would be reallocated as follows:

- Projects with a forward commitment that can meet carryover requirements,
- Projects on an established waiting list that can meet carryover requirements,
- Projects solicited through a specific Request for Proposals process.

Policy on Applications by Sponsors Who Request Additional Tax Credits after an Initial Award

Sponsors who receive an initial reservation of annual per capita LIHTC may request additional tax credits, if the project has experienced an increase in costs and eligible basis exists to allow the credits to be issued.

Requests for additional per capita credits prior to a project receiving a carryover allocation do NOT require an application via the competitive funding round (CFC process). A project with a multiple year allocation of credits will NOT require a CFC application if a carryover allocation has NOT been issued for the latest year of credits. However these projects may NOT request an allocation of credits such that the project exceeds the $700,000 per capita funding cap.

A project that has been funded with Low Income Housing Tax Credits AND has received a carryover allocation for all of the credits it was awarded must compete for an award of additional tax credits.

The Department will evaluate all requests and may or may not grant such requests depending upon the need for the additional credits, other potential funding sources available and the availability of credits for allocation by the Department. Applications for additional credits must be made prior to the building(s) being placed in service.

The application for additional credits must include an explanation of the following:

A. The process used to determine the cost estimates provided with the initial and subsequent application.
B. Justification by line item of the differences in cost between the original and the current Uses of Financing. (A copy of the initial Sources and Uses of Financing and revised Sources and Uses must be attached.)
C. Other measures considered or implemented to mitigate cost increases, including but

not limited to:

- value engineering,
- other reductions in project specifications,
- rent increases to allow added debt service (as applicable for the population to be served),
- other sources of financing examined other than Department funds (provide documentation of denials),
- a reduction in the scale of the project and/or,
- a deferral or reduction in developer fees.

D. Contingency plans if the Department rejects the application.

The Department will amend and restate all program documents, and request an additional reservation fee, including but not limited to the Reservation and Extended Use Agreement, for all applicants who receive additional tax credits AND for sponsors who might need a reallocation of credits for technical, legal and other reasons who meet the 24-month project completion schedule and Carryover Agreements.

Projects previously awarded credits that are currently in their initial compliance periods for pre-1990 projects and in their extended use period for post-1990 projects, will not be eligible to apply for additional credits until the extended use period is over unless the additional credits will provide a clearly demonstrable benefit to the tenants. Existing LIHTC projects are not eligible to receive additional acquisition credits until the end of the initial owner's fifteen-year compliance period.

Project owners who have chronic and uncorrected non-compliance findings may not be considered eligible to apply for credits for new projects until all compliance issues are resolved or a Department approved action program has been identified and adhered thereto.

Policy on Applicable Credit Percentage Rate Lock

Projects receiving an award of competitive credits have the following opportunities to lock the Applicable Credit Percentage Rate (Applicable Rate).

- In general the Applicable Rate is determined the month the project is placed in service. The placed in service date for a new or existing building is the date the building is ready and available for its specific function and usually the date the first unit in each building is certified as suitable for occupancy as governed by state or local law.
- Rather than use the placed in service election the owner may elect to use the Applicable Rate determined the month the owner and Oregon Housing and Community Services enter into a binding agreement to allocate the Credit to each building. OHCS considers the fully and properly executed Reservation and Extended Use Agreement to be the binding agreement between the owner and OHCS.
- The Applicable Rate for projects receiving more than one year's allocation of credits will have the applicable rate set at the applicable rate established in the earliest

binding agreement between the owner and OHCS. The Applicable Rate will be the same for each year of credit allocation.

- The Applicable Rate for credits on projects receiving an award of credits, subsequent to the initial award, will be the same as the Applicable Rate established in the earliest binding agreement.
- Owners of projects receiving an allocation of credits entirely from a different year(s) of credit ceiling than originally awarded to the project must enter into a new binding agreement IF they chose to establish the applicable rate prior to placed in service.

If the building is financed with tax-exempt bond proceeds the owner may elect to use the Applicable Rate for the month of bond issuance. The election statement must meet the requirements set forth in Internal Revenue Section Regulations Section 1.42-8.

Policy on Projects That Are Not Able to Meet the Carryover Allocation Timetable for Project Completion

Sponsors who are not able to perform according to their project schedules for any reason **after** they have received carryover allocations will be required to return tax credits previously awarded and re-compete in the application process.

An inability to utilize previous awards is a factor in the evaluation of sponsor characteristics and capacity. The Department may reject applications from previous program participants who have failed to demonstrate proficiency within the LIHTC Program or other government-sponsored housing programs. In addition, the Department may also reject or levy penalty points against an application from previous program participants who have failed to complete their projects in accordance with their applications and/or certified plans presented to the Department, or who have failed to effectively utilize previously allocated tax credits.

Policy on Requirement for Progress Reports

In the interest of utilizing Oregon's available credits fully, the Department will require each applicant for whom tax credits have been reserved to demonstrate through monthly reports that the project is making satisfactory progress towards completion. The progress reports are required to report on critical events and timelines such as site acquisition, meeting or failing to meet the 10% test, loan closings, groundbreaking, construction start, construction completion, etc. Each report must describe the applicant's actual progress in comparison to the original schedule submitted with the application, or any approved updated schedule. Progress reports should also report changes in project costs resulting from both savings and cost overruns. Progress report forms will be made available to each successful applicant of Department resources.

Policy on a Substantive Changes

During the entire tax credit process (during application, during review and especially after award), sponsors must keep the Department informed regarding substantive changes to the project being considered. Sponsor proposed substantive changes in the

- financing plan,

- rent structure,
- population to be served,
- assumed or awarded reservation amount,
- credit pay-in and/or equity investor,
- development team,
- partnership composition,
- management agent,
- or other aspects the Department deems substantive, upon which the initial analysis or approval of the application was based must be submitted to the Department for consideration before being finalized. Failure to report or failure to secure Department approval of substantive changes may result in rescission or modification of the credit reservation amount or carryover allocation and may impact future considerations of LIHTC applications.

Subsidy Layering Review Policy

For projects which receive, either directly or indirectly, financial assistance from U.S. Department of Agriculture Rural Development (RD) or Department of Housing and Urban Development (HUD), the Department is required to follow guidelines established by RD and HUD with respect to the review of the financial assistance provided to the project. The subsidy layering review will include a review of the amount of equity capital contributed to a project by investors, and a review of project costs including developer fees, consultant fees, contractor's profit, syndication costs and rates, etc. The Department will take any other actions required of it, as set forth in the administrative guidelines and amendments published by RD or HUD, or otherwise required by state or federal law. HUD subsidy-layering guidelines were published in the December 15, 1994 Federal Register. Subsidy layering guidelines used by the Department are available from Oregon Housing and Community Services, Housing Resources Section.

Specifically:
If there is no identity of interest (Identity of interest is a financial, familial, or business relationship that permits less than arm's length transactions. It includes but is not limited to existence of a reimbursement program or exchange of funds, common financial interests, common officers, directors or stockholders; or family relationships between officers, directors, or stockholders, between the developer and general contractor/builder), the following general contractor/builder's profit applies:

- Builder's profit up to 8% of construction costs
- Builder's overhead up to 2% of construction costs
- General requirements up to 6% of construction costs (excluding contractors liability insurance)
- Builder's profit, overhead and general requirements may not exceed 14% of total hard construction cost (less profit, overhead and general requirements).

If there is an identity of interest, general contractor/builder's profit may not exceed 10% of total

hard construction costs. (Builder's or general contractor's profit) includes builders profit, builders overhead, general requirements and project management fees associated with the hard construction of the project.)

Please Note: The Department will evaluate the cumulative profit received by developer/General Contractor in identity of interest cases and, based on industry standards and comparable projects, may reduce profits considered excessive.

LIHTC Residential Rental Property Test: Service Enriched Housing

The Department is interested in working with project sponsors to create housing that fills a need in a given community. Frequently, this need is identified as service enriched housing such as Assisted Living Facilities (ALF) and other service intensive housing. As a means to ensure compliance with Section 42 of the Internal Revenue Code, all units, including ALFs and others, considered in basis for Low Income Housing Tax Credits must meet the residential rental property test as follows:

- Unit must be available to the general public. A unit will fail this test if, for instance, it is provided for use solely by members of a social organization or by an employer for its employees. LIHTC regulations adopt a general use requirement similar to the HUD housing policy governing non-discrimination. Therefore, preferences to certain classes of tenants (e.g., the homeless, disabled and/or handicapped) will not violate the general use requirement if such preference does not violate any HUD policy governing non-discrimination.

- Unit is not used on a transient basis. This test is met if the initial lease term for an LIHTC unit is a minimum of 6 months.

- Residential rental property may include any facilities that are functionally related and subordinate to the property, such as community rooms, if such spaces are available to all residents of the development free of charge.

LIHTC and Assisted Living Facilities or other Special Use Housing

A hospital, nursing home, sanitarium, lifecare facility, manufactured dwelling park used on a transient basis or intermediate care facility that provides significant services other than housing is generally not eligible for credit under Section 42. (Please also see Revenue Ruling 98-47.

However, if the following tests are met, the furnishing of services may not disqualify some of these properties as residential rental property:

- Services are optional. Services may be considered optional on a facts and circumstances basis. Services are optional if:
  - payment for the service is not a condition of occupying the residential unit;
  - residents have the option to decline the services, or;
  - residents have the right to obtain services from an alternative provider.

Services are not optional if:

- they are continual or frequent medical or nursing services, or;
- they are required as a condition of tenancy and payment for services is not included in the LIHTC rent (within the LIHTC rent limits).

If services are not optional, the cost of services will be included in the LIHTC rent calculation and the unit may not qualify as a LIHTC unit and may be removed from basis.

- Charges for services that are not optional to low income tenants must be included in the gross rent calculation. In this case the combined rent and service charge cannot exceed the maximum LIHTC rent for the unit.

  An exception is made for federally assisted projects for the elderly and handicapped (PLR 8921035). This exception applies to facilities authorized under 24 CFR § 278 to provide mandatory meals. To qualify for this exception, all provisions of 24 CFR § 278 must be met.

- Supplemental payments made by a state under its SSI program directly to the owner for the purpose of allowing low income elderly to live in assisted living facilities may be excluded in the determination of the tenants gross rent under Section 42 if that payment is made under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home or intermediate care facility for the mentally or physically handicapped (Treasury Regulation §1.42-11(b)(3)(ii)(A)).

Policy on Historic Preservation

The Department encourages all project sponsors working with properties 50 years old or older to consult with the State Historic Preservation Office to determine the historic significance of the building. If the buildings are determined significant, the Department encourages preservation of the historic elements in the most efficient and effective manner possible. The State Historic Preservation can be reached at: State Historic Preservation Office, 725 Summer St. NE, Salem OR 97301, telephone: 503-378-4168 x231, fax: 503-378-6447.

Policy on Market Assessment

The Department, as per IRC Section 42 requires a comprehensive market study for each Low Income Housing Tax Credit project. The study must be conducted at the developer's expense and must be completed and approved by the department prior to a credit allocation for 4% projects and one month prior to carryover for projects receiving LIHTC credits awarded on a competitive basis. A disinterested party approved by the allocating agency must conduct the study.

LIHTC applicants must contact the Department to obtain a list of approved market analysts. The analysts **should** conduct the market study in such a manner as to address the issues described in

the Consolidated Funding Cycle Application, 4% LIHTC Application or Multi-Family Rental Housing Risk Sharing Program Application, Elderly and Disabled application and/or any additional program materials adopted or used by the department. The market study may be included in an appraisal provided the appraiser has followed the instructions provided by the department (refer to instructions to appraiser) and is prepared by a department approved market analyst. Following its review of the market study, the Department, in its sole discretion, may request additional market information from the applicant and additional comment from the local government before reserving tax credits, and may decline to reserve credits if the proposed project has a potential to disrupt the local housing market.

It is a preference of the Department that, the local government is informed by the sponsor on the conclusions of the market study concerning the demand for this specific project in the market area and detailing any disagreements it may have with the market study.

The Department may reject an application and revoke the credit reservation if it determines, in its sole discretion, that based on information submitted in the applicant's market study or information obtained by the Department from other sources, market demand and conditions do not justify the project as proposed. The Department will consider all facts and circumstances in making this determination, including the possible disruption caused by unneeded units entering the market.

Policy on Dispursement of Units

It is the policy of the Department that all housing credit developments have affordable units disbursed throughout the development as well as throughout unit sizes. Projects will be considered unacceptable if:

- All affordable units (LIHTC eligible units) are located in one building, if a multi-building project.
- All affordable units are restricted to one unit type (i.e., number of bedrooms or square footage) in projects that have a variety of unit types.

Projects meet the Department dispersement policy if:

- LIHTC eligible units are located in all buildings of a multi building project.
- There are LIHTC eligible units available in all unit types.

Projects being built in phases should also meet the above dispersement policy for each phase of the development.

Policy on Property Management Units

A full-time resident manager's unit or other supportive units in an LIHTC project may be required based on the size and/or special needs of the individual project. Some projects may utilize more than one unit, again based on the size and/or special needs of the individual project. Currently OHCS requires sponsors to designate in the restrictive covenant documents any management units that will not be included in the applicable fraction.

For buildings placed in service after September 9, 1992, the manager's unit may be considered as "common area" within a rental development. Under this interpretation, (see IRS Revenue Ruling 92-61), the unit is excluded from the low-income occupancy calculation; and the unit may be used by the manager without concern for the effective rent charged to or the income level of the manager. If this option is elected, the unit occupied by the resident manager is included in the building's eligible basis; but excluded from the applicable fraction for the purposes of determining the building's qualified basis.

To qualify as a common area the unit must support or be reserved for the benefit of all the rental units. The unit can only receive this designation if the manager or any other position utilizing a unit (i.e., maintenance) is full-time to that project. The position description must clearly indicate that the position is full-time, (OHCS considers anything more than 32 hours a week full-time), and that the position does not utilize the unit to support other employment duties unassociated with the project that may be assigned by the sponsor or property management company. For example, if an on-site manager is assigned by a property management company to manage multiple projects in the same locale, and it appears that employment at the primary project only comprises 50% of the employment, then the unit cannot be called a common area unit. OHCS reserves the right to approve/disapprove any management units. The following criteria (not inclusive) may be considered in approving/disapproving units:

- Size of project
- Type of project (i.e., elderly, family etc.)
- Proximity of the project to property management offices
- Community resources available for maintenance/supportive services etc.

The owner must make a designation of the unit as common space or as a low-income residential unit. All developments must notify OHCS of the status of the full time resident manager's unit and any other staff units. As long as the number of previously approved management units are not increased, the owner shall be permitted to move the management units within the project as long as the change is reported on the owner's annual certification of compliance.

Developer Fee Policy

The Department acknowledges the applicants' needs to include fees, which support sound development practices and develop capacity. The developer fee includes other "soft" costs which go into putting a project together (e.g. development consultant fees, project management fee, developer's overhead and profit, etc) and any developer fees chosen to be deferred. The Department has established a maximum developer fee of 15% on all projects. However, the reasonableness of fees will be evaluated based on the risk and complexity of the proposed development

Applications, which include limited or no cash development fees, may be financially infeasible. The department recognizes the need for a project's viability to take into consideration cash development fees to cover unforeseen contingencies and the project's need to meet underwriting criteria. The

department realizes that circumstances, often beyond the control of the developer or sponsor, may change the amount of the cash and/or deferred developer fees. Finally project sponsors may be able to adjust deferred and/or cash development fees depending on the sponsor's ability to develop a project within budget and the anticipated development period.

The department realizes that deferred developers fees, as originally proposed, often fill a portion of a project's development cost gap. This figure often fluctuates significantly as the project progresses. If additional resources are identified that reduce the deferred developer fees the department encourages sponsors to provide additional project amenities and/or reduce project debt.

A general framework adopted by the Department to determine developer's fee reasonableness is included in the CFC Application, 4% LIHTC Application, **and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.**

An increase in the total developer's fees through the course of development will require the prior approval of the Department and must be justified by a change in the scope of the development. Sponsors failing to request prior approval are at risk of Department resources being recaptured.

A large difference in the amount of deferred and cash development fees represented at final application or cost certification versus original application may be considered a misrepresentation of the original project application IF the department is not provided with a reasonable explanation for the difference. The department realizes project cost changes occur during the development process the department will consider a deviation of the lesser of 25% or $200,000 from the deferred or cash development fees represented in the original application to the department to be de minimus and thus acceptable without departmental approval. Changes in the deferred and/or cash development fees beyond the lesser of 25% or $200,000 must be presented to the Department for approval 30 days prior to final application(s) or cost certification(s).

The calculation of developer fees as a percentage of project cost must net out the development fee from the total project cost. Specifically:

$$\frac{\text{Developer Fee}}{(\text{Total Development Cost - Developer Fee})}$$

Deferred developer's fees will not be included in computations for the reasonableness of the proposed fee. Deferred developers fee is defined by the Department as a portion of the developer fee that is being taken over a period not to exceed fifteen years and is being paid out of project cash flow. Developer fee paid from a final equity payment is not considered a deferred fee. Under no circumstances can the combined total of deferred fees and fees earned through the course of construction exceed the maximum of 15%.

To be included in tax credit basis, deferred developer fees must be due and payable at a

date certain generally within a time period that does not exceed 15 years. Cash-flow projections must support the expectation of deferred fee payment within 15 years of a project's placed-in-service date. If fees are permanently contributed to the project, they must be paid to the developer and then contributed to the project if the fees are to be included in tax credit basis.

Developer's fees for acquisition and rehabilitation projects will be calculated for reasonableness on acquisition and all other costs. In general developer's fees will be limited to a maximum of 5% of the acquisition costs and fees for all other costs including rehabilitation as defined for other projects. However applicants for complex acquisitions such as expiring use projects or projects with Uniform Relocation Requirements (as required by the HOME Program) may be able to justify a higher developer fee due to the complexity of the transaction. In such instances, it is recommended that Department approval be requested and obtained prior to submission. Sponsors should contact their HCS Regional Field Representative for more information.

The Department's Finance Committee will make the final determination of developer fee reasonableness and the State Housing Council in instances where tax credits is coupled with other Department grants or loans in excess of $100,000.

Environmental Review Policy

All tax credit project applicants are required to complete and submit the Department's environmental review form. This form can be found in all of the LIHTC application materials.

Scattered Site Policy

The Department will entertain proposals for scattered site housing developed under Section 42 if the project includes buildings which would, but for their lack of proximity, qualify as a project for purposes of Section

To qualify the following Federally stipulated conditions must exist:

- Project must be under common ownership,
- Project must be developed under a common plan of financing,
- 100% of the units in each building must be rent restricted.

To be considered developed under a common plan of financing, the scattered site project must be considered as a single project by all financing partners.

130% Rule and Community Service Facilities

The IRS stipulates certain areas as "difficult development areas." These areas, published in each application for LIHTC, allow a developer to request 130% of credits derived from the basis calculation. The Department will, at its sole discretion, determine the application of the 130% bonus to a project located in a designated "Difficult Development Area (DDA)". The award of the bonus will be made based upon the amount of credits required to make the project financially feasible and will not be unreasonably withheld.

The 130% bonus is also available to projects located in HUD determined Qualified Census Tracts. The Qualified Census Tracts are defined as census tracts in which 50% or more of the households are at or below 60% of area median income, as well as census tracts with a poverty rate of 25% or higher.

Eligible basis costs for new construction and rehabilitation only can qualify for this basis increase Acquisition costs are specifically excluded by IRS code from the 130% bonus. Federal regulation permits the inclusion of a "community service facility" to serve non-residents in adjusted basis of a portion of a low-income building (not exceeding 10 percent of the eligible basis) located in a qualified census tract. Space could be used for purposes, including but not limited to, child daycare, senior programs and job training. Community service facilities are defined as facilities that are designed to primarily serve low-income households (60 percent or less of area median income.) Project employees could also use the facilities.

Rehabilitation Requirements/Replacement Reserve Policy

The Department requires all applicants for LIHTC acquisition and rehabilitation credits to complete a thorough rehabilitation assessment by an approved third party unless an exception is provided by OHCS. All projects are subject to inspection, by OHCS and/or an OHCS approved third party representative(s), to make certain work has been performed to the department's satisfaction. Architectural standards are included in the CFC **and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.**

Please consult 24 CFR part 35 for additional specific information regarding lead-based paint requirements or contact OHCS LIHTC Program Representative.

IRS Audit Guide Policy

The Internal Revenue Service has adopted a Final Audit Guide. The Final Audit guide is the document used by the IRS to offer the IRS examiner technical support for identifying and developing issues related to IRC Section 42. The guide consists of chapters covering specific LIHTC topics and issues that describe in some detail how the Service is examining credits issues such as basis and developer fee. From time to time, the Department will rely upon the Audit Guide for assistance in evaluating projects. Developers should be aware of the contents of the Guide. It can be found on the Internet at www.novoco.com/audit_guide.htm or www.irs.gov/bus_info.

Memorandum of Understanding/IRS Form 8821 Policy

As the Housing Credit Agency for the state of Oregon, OHCS is responsible for taking and verifying LIHTC applications from developers, as well as monitoring health and safety violations and tenant qualifications, while the IRS is responsible for administering the program nationwide. The IRS is the only agency that can revoke or adjust the amount of LIHTC allocated

to a given project. The IRS through the audit process disallows credits, which were not properly used to build affordable housing. Since disallowed credits cannot be re-used, OHCS has an interest in ensuring the proper usage of credits to increase the supply of affordable housing. Although the IRS and OHCS share responsibility for the Credit program in Oregon, tax payer information cannot be disclosed to OHCS unless authorized by the taxpayer on IRS Form 8821, Tax Information Authorization (Rev. 9-98).

All applicants to the State of Oregon must provide with their applications a signed IRS Form 8821. The Form is found in the LIHTC application materials. The Form 8821 names the housing credit agency (OHCS) as the appointee to receive tax information. The IRS will provide OHCS with federal tax information relating to LIHTC, including audit findings and assessments, and enabling OHCS to make a more informed allocation of LIHTC.

The process:

- OHCS will require developers to complete Form 8821 as a condition of application for an allocation of LIHTC. The developer will name OHCS as the appointee to receive tax information. A completed Form 8821 will be forwarded to the IRS by OHCS within 60 days of receipt.
- Pursuant to Internal Revenue Code Section 6103(c) after receiving Form 8821, the IRS provides OHCS with any federal tax information pertaining to the LIHTC, including findings and assessments, for the tax periods specified on the From. This includes a review of the Business Master File, revenue agent reports, and other sources of account data.
- OHCS will ensure that information provided by the IRS under the agreement is used solely for the purpose of awarding LIHTC and the information will be safeguarded by OHCS to prevent improper disclosure according to state and federal statutes.

Policy on Exceptions/Waiver Requests

All Department policies other than those mandated by Section 42 are considered to be guidelines and all may be excepted for justifiable reasons. To be considered for an exception or waiver of applicable policies or criteria, applicants, lenders or syndicators must request the waiver or exception in writing with a full justification.

Mixed Use Project Policy

The Department is interested in pursuing mixed residential/commercial developments where appropriate. As a part of the LIHTC application, the Department will require full disclosure on the financing, ownership and management of the commercial spaces in addition to all required information for the residential spaces. Sponsors must be prepared to provide detailed sources and uses statements that clearly delineate the commercial and residential costs and sources of funds.

The Department will underwrite both residential and commercial spaces in its evaluation of the project and the project's future feasibility. Release of the IRS Form 8609 will be contingent upon successful leasing of the commercial space, a guarantee of commercial space rent, or a

clear demonstration that the commercial financing is in all respects separate from the residential financing.

Mixed Income Policy

The Department is interested in pursuing mixed income projects where appropriate. Note that all LIHTC requirements and state policies must be met.

Policy on Short Term Use of Tax-Exempt Bond Financing

As a general principle, the Department is not is favor of the use of tax-exempt financing subject to the bond cap, on a short-term basis. However, in specific situations where the use of such short term financing on a portion of the tax exempt financing can provide a demonstrated benefit that furthers affordability, the Department is willing to make an exception to this principle. In evaluating this benefit, the Department will examine the affordability of a project with and without the use of the short term financing, and will, in its sole discretion, determine if the affordability warrants the use of the tax-exempt financing. All projects proposing such a use must adhere to requirements of Section 42 as well as state requirements.

Acquisition/Rehabilitation Tenant Certification Policy.

The tenant certification process for acquisition/rehabilitation projects is a difficult dilemma. The IRS has provided new guidance regarding whether and when it is necessary to do initial certifications of tenant income for both the acquisition and rehabilitation credits. Their response was “at acquisition”. Be advised that regardless of the State’s opinion on the necessity of completing certification, the IRS will make their own decision should they audit any given project. Please consult your tax advisor regarding this issue.

Relocation/Displacement Policy

Permanent displacement or relocation due to Department funding is strongly discouraged. If any relocation or displacement might occur as a result of a project applicants must include the following.

- Provide a complete survey of existing tenants using the format provided by OHCS. This survey must include third party income verification and be completed and approved by the department prior to the close of project financing.
- Indicate if over crowding exists in any of the units.
- Describe the type of displacement that will occur, permanent or temporary (if temporary can the work be achieved without displacement?)
- Describe the process used to inform tenants of displacement or relocation.
- Describe the proposed relocation/displacement process. Indicate compensation and advance notice provided to those subject to displacement.
- Describe the availability of comparable units in the community.
- Indicate the source of funds for relocation expenses.
- Describe any community policies regarding tenant displacement or relocation
- Describe how tenants with disabilities will be assisted regarding relocation or displacement

- Describe how the completed units will be affordable to income qualified tenants
- Provide monthly documentation on each resident to be relocated or displaced. This information should be included in monthly project reports to OHCS.
- Copies of all notices and documentation shall be forwarded to OHCS.
- The relocation plan must be reviewed and approved by the Department
- For project receiving federal funds, the Uniform Relocation Act (URA) may apply. The URA requirements will supercede the above.

Compliance Monitoring Policy

As the al-locating agency for the State of Oregon, OHCS is responsible for compliance monitoring of all Low Income Housing Tax Credit projects for adherence to Section 42 as well as adherence to conditions stated in the project application. The Department is responsible for establishing compliance monitoring procedures and must report incidences of noncompliance to the Internal Revenue Service (IRS). Monitoring each project is an ongoing activity that extends throughout the Credit compliance period (at least 30 years, except in pre-1990 projects that have a 15-year compliance period). The Department is responsible to monitor not only for compliance with Section 42 of the IRC, but also for state requirements as represented in the application for LIHTC. Non-compliance with state requirements is grounds for the issuance of a non-compliance finding with the IRS. Note: Projects that have funding sources obtained from the Department in addition to the credit will be monitored for the most restrictive requirements of the combined programs. Owners must be aware of the differences in program regulations.

The Compliance Monitoring Process is based upon the following components:

- IRC Section 42 and promulgated regulations including IRS Regulation (TD 8859), also known as the "Final Rule"
- Oregon Administrative Rules for LIHTC Programs
- Qualified Allocation Plan for projects with Building Identification Numbers (BIN) beginning with OR90 and following
  - X The Compliance Manual
  - X Compliance Training Workshops
  - X Owner's Certification of Continuing Project Compliance and Project Fees
  - X Utility Allowance Documentation
  - X Use of Correct Rents and Incomes
  - X LIHTC Compliance Forms
  - X Lease and Tenant Selection Criteria Review and Approval
  - X Tenant File Review and Project Site Inspections
  - X Exemptions & Special Circumstances
  - X Record Keeping and Record Retention
  - X Noncompliance/Plans to Correct Noncompliance/Form 8823
  - X Monitoring Fees
  - X Resident services Proposed in Application
  - X Uniform Physical Conditions Standards as per HUD (24 CFR 5.703)

The owner of a qualified low income tax credit project is required to comply with the following:

- **Record keeping:** The owner is required to maintain accurate records for each building in the development. These records must include:
- The total number of residential rental units in the building, including the number of bedrooms and the square footage of each residential rental unit.
- The total number of low-income units in the building.
- The total number of occupants in each low-income unit.
- The rent charged on each residential rental unit in the building, including any utility allowance.
- The low-income unit vacancies in the building.
- The rentals of the next available unit in each building and to whom rented.
- The character and use of the non-residential portion of the building that was included in the building's eligible basis. (I.e., facilities that are available on a comparable basis to all residents and for which no separate fee is charged for the use of the facilities).
- Documentation regarding the eligible and qualified basis of each building as of the end of the first year of the tax credit period.
- Income certification for each low-income household.
- Documentation supporting each household's income certification (third-party verifications, asset certification, etc.
- The original local health, safety or building code violation reports or notices that were issued by the State or local governmental unit.
- Documentation that all units are available to the general public.
- **Record Retention:** Owners are required to keep all records for each building for a minimum of six years after the due date (with extensions) for filing the federal income tax return for that year. However, the records for the first year of the credit period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.
- **Certification:** The owner must certify the following, under penalty of perjury, at least annually through the end of the compliance period:
- The project meets the requirements of the 20/50, 40/60 or other elected set-aside test.
- There was no change in the applicable fraction, as defined in IRC Section 42(c)(1), of any building, or, if so, a description of the change.
- The owner has received an annual resident certification form from each low-income household and documentation to support that certification.
- Each low-income unit in the project is rent restricted.
- Each building is suitable for occupancy per federal, state and local health, safety and building codes.
- There has been no change in eligible basis, as defined in IRC Section 42(d), of any building, or, if so, the nature of the change.
- All resident facilities included in the eligible basis of any building are provided on a comparable basis without a separate fee to all residents of the project.
- Resident services are being provided as described in the application for credits, or suitable

alternative resident services are being provided.

- If a low income unit becomes vacant during the year, reasonable attempts are made by the owner to rent it to a resident with a qualifying income and while it is vacant, no units of comparable size or smaller are rented to residents not having a qualifying income.
- If any low-income household's income increases above the limit (140% of the area median income adjusted for family size), the next available unit of comparable size or smaller will be rented to households having a qualified income.
- A Declaration of Land Use Restrictive Covenants is in effect for all post-1990 projects.
- Monitoring of a project will occur as follows:
  - An on-site inspection of all buildings in a project will occur by the end of the calendar year following the year the last building is placed in service. This review will include a physical inspection, review of the low-income certification and documents supporting the certification as well as all rent records for each tenant. The inspection will include an assessment of habitability standards.
  - At least once every three years, the Department will conduct an on-site inspection of each building in a project and will review tenant files for at least 20% of the project's low-income units. This review will include a physical inspection, review of the low-income certification and documents supporting the certification as well as all rent records for each tenant. The inspection will include an assessment of habitability standards.
  - Annually the Department will visit at least 20 percent of the tax credit projects in the state and will review the resident certification forms, the supporting documentation pertaining to the certification and the rent records for at least 20 percent of the low income units in the project. Selection of units whose records are to be inspected will occur only at the time of the on site visit and not before. In addition, the Department will annually conduct a physical unit inspection of at least 20 percent of the units in a project. Random samples of both projects and units will be selected for review each year. The inspection will include an assessment of habitability standards.
  - In addition, at the time of these monitoring reviews the Department will also review for compliance with State or local building codes and for compliance with the Fair Housing Act.
  - When a project is selected, the Department will:
  - Perform the on-site file, property and unit inspections;
  - Inform the owner as soon as possible of any finding of noncompliance with regard to such review.
- **Liability:** Compliance with the requirements of Section 42 and state regulation is the responsibility of the owner. The Department is not liable for an owner's non-compliance.
- Correction of Non-Compliance Conditions: The Department will provide written notice of non-compliance to the owner if:
- Annual Certification Report with attachments is not received by the due date.
- The project is found to be out of compliance, through inspection, review or other means, with the provisions of Section 42 or state regulations. The owner will have 45 days from the date of notice to supply any missing information for the Annual Certification Report. The owner will

have 45 days from the date of notice to correct any non-compliance issues. The Department may grant an extension of up to 90 days if good cause is demonstrated as determined by the Department. At the end of the allowable correction period, the Department is required to file Internal Revenue Service Form 8823, "Low Income Housing Credit Agencies Report of Noncompliance," with the IRS. All non-compliance issues must be reported whether corrected or not. The Department will explain the nature of the non-compliance or failure to certify and state whether the non-compliance has been corrected. The IRS will make any determinations as to the applicability of recapture penalties, not the Department.

- **Compliance Monitoring Fees**: The IRS requires inspection of projects every three years. Monitoring fees are $25.00 per unit per year and will apply to all LIHTC projects regardless of the placed in service date.
- **Participatory Requirements**: Oregon Housing & Community Services requires that all projects comply with the participatory requirements as described in the Consolidated Funding Cycle, 4% LIHTC application(s) and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.

As provided in the IRS compliance monitoring regulations, the Department has a right to review tenant files on-site and/or to perform physical inspections of LIHTC Projects as deemed necessary throughout the 30-year compliance period (15 years for pre-1990 projects).

The owner of a project in non-compliance will be responsible for reimbursing the Department for all expenses associated with the non-compliance reviews. Expenses for conducting additional on-site inspections will include but are not limited to:

- The standard mileage rate in effect at the time of the re-inspection
- Any overnight expenses
- A meal allowance of $30 per day
- A charge of $55 per hour to review tenant files or re-inspect units

The Department will also charge $55 per hour with a $55 minimum to review documents forwarded to the Department to correct non-compliance. Any additional expenses incurred by the Department as it relates to an owner's non-compliance shall be the responsibility of the owner.

More information on monitoring can be found in the Department's LIHTC Compliance Manual, available from the Asset and Property Management Section at OHCS.

Other items that will be requested by the Department as a means to track project health include:

- Audited (if available) otherwise, unaudited annual financial statements for each sponsor and project
- Annual project operating statements showing income and expenses as they relate to the real property
- Documentation that all state requirements are being met, especially resident service provision. This can be done via a certification from the owner of the activities conducted in the previous

year.

- Advance notice sufficient to allow the Department (at its discretion) from time to time to review qualifications must be given prior to any change in the Management Agent. . NOTE: it is not required that the Department approve changes in management agent, however, it is imperative that the Department be notified of such changes, and have time to review the new management agent qualifications as a means to maintain consistency in compliance monitoring.

Disclaimer

Issuance of a Tax Credit Reservation, Tax Credit Carryover Allocation or Placed-In-Service Allocation (IRS Form 8609) by the Department shall not constitute or be construed as a representation or warranty as to the feasibility or viability of the project, or the project's ongoing capacity for success, or any conclusions with respect to any matter of federal or state income tax law. All tax credit allocations are subject to the Internal Revenue Service regulations governing the tax credit program, and applicants are responsible for the determination of their project's eligibility and compliance. If statements in this QAP are in conflict with the regulations set forth in Section 42 of the IRC or its amendments, the regulations shall take precedence. Applicants should not rely solely upon this guide or the Allocating Agency's interpretations of the IRC requirements relating to the tax credit.

EXHIBIT A

QUALITY DEVELOPMENT OBJECTIVES

Excerpt from Executive Order No. EO 97-22
USE OF STATE RESOURCES TO ENCOURAGE THE DEVELOPMENT OF QUALITY COMMUNITIES

WHEREAS it is a goal of the State of Oregon as expressed in statute and in state agency goals and programs to accommodate growth and development in a manner that promotes quality communities, protects the land base for our farm and forest industries, and reduces the cost of public facilities and services; and

WHEREAS several state agencies are responsible for implementing this goal through state policies, statutes and administrative rules; and

WHEREAS there is a need to coordinate and target these programs and activities in order to protect the long-term value of the state's investments in Oregon communities and to use limited public dollars strategically; and

WHEREAS a set of development objectives reflecting state policies, statutes and administrative rules is needed to articulate the state's community development interests and to provide a framework for coordinating and targeting state programs and action; and

WHEREAS it is recognized that local jurisdictions may have their own set of development objectives and priorities reflecting local needs and interests; and

WHEREAS the state should negotiate to resolve differences between state and local community development objectives.

THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:

The state shall strive to ensure that its programs and activities help build and maintain quality communities which have clear air and water, housing that is affordable to community residents, a balance of jobs and housing in proximity to one another, development patterns that minimize the cost of public services, and a mix of residential, commercial, industrial and institutional uses that supports a balanced transportation system.

A. Quality Development Objectives

The following Quality Development Objectives are hereby established to articulate the state's community development interests and to establish the state's investment priorities for the physical development of communities. The Objectives should be used in combination with state and local partnership principles and local development objectives to help build healthy and diverse communities and regions throughout Oregon.

1) Promote compact development within urban growth boundaries to minimize the costs of providing public services and infrastructure and to protect resource land outside urban growth boundaries.
2) Give priority to a quality mix of development that addresses the economic and community goals of a community and region.
3) Encourage mixed use, energy-efficient development designed to encourage walking, biking and transit use (where transit is available).
4) Support development that is compatible with a community's ability to provide adequate public facilities and services.
5) Facilitate development that is compatible with community and regional environmental concerns and available natural resources (e.g., available water, air quality, etc.)

6) Support development that provides for a balance of jobs and affordable housing within a community to reduce the need to commute long distances between home and work, thereby minimizing personal commuting costs as well as the public and societal costs of expanding the transportation infrastructure.
7) Promote sustainable local and regional economies in order to provide jobs for residents and financial support for community services.

EXHIBIT B

PRELIMINARY ARCHITECT and "AS BUILT" CERTIFICATIONS

Preliminary Certification

I have examined the drawings and specifications dated _________prepared by _____(architect)________ and related to the development known as _____(project name)____
located in _______(city, state)________.

Based upon this examination, to the best of my knowledge and belief, these documents conform to all local, state and federal laws designated as the development standard for the project including, but not limited to, the Fair Housing Laws as they pertain to disabled accessibility and adaptability, all local health, safety and building codes and those requirements related to design or construction of the project as set forth in the Department's Low-Income Housing Tax Credit Allocation Plan.

__________________ __________________

Architect Owner

Date:_______________ Date:______________

"As-Built" Certification

I have inspected the development known as _____(project name)___located in _______(city, state)________ and hereby certify that the development has been built in accordance with the drawings and specifications dated ____________ and prepared by _________________________.

Based upon this inspection, to the best of my knowledge and belief, the development has been constructed in conformance with all local, state and federal laws designated as the development standard for the project including, but not limited to, the Fair Housing Laws as they pertain to disabled accessibility and adaptability, all local health, safety and building codes and those requirements related to design or construction of the project as set forth in the Department's Low-Income Housing Tax Credit Allocation Plan.

__________________ __________________

Architect Owner

Date:_______________ Date:______________

EXHIBIT C

OREGON AFFORDABLE HOUSING POLICY STATEMENT

Oregon State Housing Council

WHEREAS, pursuant to ORS 456.555(6)(a), the State Housing Council (the "Council") shall, with the advice of the Director of the Housing and Community Services Department (the "Director"), set policy and approve or disapprove rules and standards for housing programs of the Housing and Community Services Department (the "Department"); and,

WHEREAS, pursuant top ORS 456.571(1), the Council shall develop policies to aid in stimulating and increasing the supply of housing for persons and families of lower income; and,

WHEREAS, pursuant to ORS 456.571 (2)(a), the Council must review each single-family home ownership loan in excess of $150,000 and all other housing loans or grants in excess of $100,000 which are proposed to be made by the Director for approval or disapproval; and,

WHEREAS, pursuant to ORS 458.620(3), as amended by 1995 Oregon Law, Section 1, Chapter 174, the Council shall establish a policy for distributing funds of the Home Ownership Assistance Account, in accordance with said statute, to assist persons of low and very low income, as defined in ORS 458.610, until December 31, 2002, at which time said statute is repealed; and,

WHEREAS, pursuant to ORS 458.620(3) and ORS 458.650, the Council shall establish a policy for distributing funds of the Housing Development and Guarantee Account and the Emergency Housing Account, in accordance with said statutes, to assist persons of low and very low income, as defined in ORS 458.610; and,

WHEREAS, the Council recognizes the need to develop affordable housing policy which provides a comprehensive plan for the success of a proposed housing project as well as to the individuals or families who occupy said project; and,

WHEREAS, the Council has adopted the following mission statement: :The Oregon State Housing Council shall promote a positive quality of life for Oregonians through the development of high quality affordable housing."

NOW THEREFORE, the State Housing Council adopts the following policy:

All things within the scope of the Council's statutory authority and projects submitted to the State Housing Council for approval, shall be reviewed in light of, but not limited to, the following areas; i) Financing and Need; ii) Integrated and Quality Development; iii) Property Management; iv) Long Term Program/Services Scope and Management; v) Capacity Building; and vi) Council adopted plans and policies that target state and federal resources in support of moderate and low income Oregonians.

The State Housing Council, with the advice and assistance of the Director, will design specific criteria for project approval, in accordance with the above referenced statutes. The criteria will be reviewed on an

annual basis by the State Housing Council at the Council's Fall retreat, or as otherwise designated by the chair of the Council.

OREGON AFFORDABLE HOUSING POLICY CRITERIA

In concert with its mission and statutory authority to set housing policy for the State of Oregon (ORS 456.555 (6) (a), and to protect the public interest in affordable housing development and related programs, the Oregon State Housing Council supports initiates and approved funds for proposals that address the following criteria:

i. FINANCING AND NEED

Assure the long term viability of projects through accurately determining the need and doing a present value economic analysis versus the cost of dollars.

ii. INTEGRATED AND QUALITY DEVELOPMENT

Assure a thorough and multidimensional review of site specific planning considerations and encourage the integration of incomes and densities in communities, neighborhoods, or geographic locations. Proposals to create affordable housing shall demonstrate how they contribute to positive community climates with adopted comprehensive plans.

iii. PROPERTY MANAGEMENT

Assure the maintenance of properties in a decent, safe, sanitary condition that assures long-term stewardship of the property.

iv. LONG TERM PROGRAM/SERVICES SCOPE AND MANAGEMENT

Assure the ongoing viability and implementation of an appropriate resident service program.

v. CAPACITY BUILDING

Utilize and foster the further development of capacities in the community for the development and maintenance of affordable housing options.

vi. COUNCIL ADOPTED PLANS AND POLICIES THAT TARGET STATE AND FEDERAL RESOURCES IN SUPPORT OF MODERATE AND LOW INCOME OREGONIANS

Assure private, local, state and federal resources are applied in an integrated, collaborative, community supported and coordinated manner.

EXHIBIT D

IRS MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING

INTERNAL REVENUE SERVICE/OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT

LOW INCOME HOUSING TAX CREDIT PROGRAM
(LIHTC)

1. Introduction

This Memorandum of Understanding (MOU) between the Internal Revenue Service (IRS) and the Oregon Housing and Community Services Department sets forth the agreement of the parties with respect to an initiative to improve the administration of the Low Income Housing Tax Credit (LIHTC) program.

2. Authority

This MOU is entered into between the IRS and the Oregon Housing and Community Services Department pursuant to Section 42 of the Internal Revenue Code, which gives joint responsibility for administering the LIHTC program to state and local housing credit agencies and the IRS.

3. Purpose

The purpose of this initiative is to enable the Oregon Housing and Community Services Department to make a more informed allocation of low income housing credits in support of the objective that credits are used as intended, to increase the supply of affordable housing.

4. Duties and Responsibilities of the IRS

A.

1. The IRS will provide the Oregon Housing and Community Services Department with federal tax information pursuant to Internal Revenue Code Section 6103 (c) after receiving Form 8821, Tax Information Authorization (Rev. 9-98), submitted by a LIHTC applicant.

2. The IRS will only provide the Oregon Housing and Community Services Department with federal tax information pertaining to low-income housing credits.

3. The IRS will provide the Oregon Housing and Community Services Department with all federal tax information pertaining to low-income housing credits, including audit findings and assessments, for the tax periods specified on Form 8821 (Rev.9-98). On line 3 of Form 8821 (Rev. 9-98), in addition to the type of tax, tax form number, and year or period, the following statement must be included in column (d): "Any related federal tax information pertaining to low-income housing credits, including audits findings and assessments."

4. The IRS will review the Business Master File, revenue agent reports, and other sources of account data for information pertaining to low-income housing credits for the entity shown on Form 8821 (Rev. 9-98) and provide the results of the research to the Oregon Housing and

Community Services Department within 30 days of receipt of Form 8821 (Rev. 9-98).

5. The IRS will provide assistance in training and educating the Oregon Housing and Community Services Department as necessary. The IRS will have full discretion with regard to all aspects of the training, including the timing of training.

B. Unless otherwise specified elsewhere in the Agreement, the IRS shall furnish all necessary management, supervision, labor, facilities, equipment, supplies and materials necessary to fulfill its responsibilities and duties under the Agreement.

5. Duties and responsibilities of the Oregon Housing and Community Services Department

A.

1. As a condition of application for an allocation of LIHTC, the Oregon Housing and Community Services Department will require the applicant to complete Form 8821, Tax Information Authorization (Rev. 9-98), naming the Oregon Housing and Community Services Department ass the appointee to receive tax information. Form 8821 (Rev. 9-98), will be included in and will be submitted with the application package. On Line 3 of Form 8821 (REV.9-98), in addition to the type of tax, tax from number, and year or period, the following statement must be included in column (d): "Any related federal tax information pertaining to low income housing credits, including audit findings and assessments."
2. The Oregon Housing and Community Services Department will forward the completed and signed Form 8821 (Rev.9-98) to the IRS. Form 8821 (Rev. 9-98) must be received by the IRS within 60 days of the date it was signed or else it becomes invalid.
3. The Oregon Housing and Community Services Department will ensure that information provided by the IRS under this Agreement is used solely for the purpose of LIHTC awards. The information will be safeguarded by the Oregon Housing and community Services Department to prevent improper disclosure.

B. Unless otherwise specified elsewhere in this Agreement, the Oregon Housing and Community Services Department shall furnish all necessary management, supervision, labor, facilities, equipment, supplies and materials necessary to fulfill its responsibilities and duties under the Agreement.

6. Liability:

A. Each party to this Agreement shall be liable for the acts and omissions of its own employees.

B. The IRS shall not be liable for any injury to another party's personnel or damage to another party's property unless such injury or damage is compensable under the Federal Tort Claims Act [28 U.S.C. 1346(b)], or pursuant to other Federal statutory authority. Similarly, the Oregon Housing and Community Services Department shall not be liable for any injury to another party's personnel or damage to another party's property unless such injury or damage is compensable under applicable state or local law.

7. Third Party Rights:

This MOU does not confer any rights or benefits on any third party.

8. Effective Date:
The effective date of this MOU is the date it has been signed by all parties to the Agreement.

9. Amendment of the MOU:
This MOU may be amended by deletion or modification of any provisions, provided that such amendment is in writing and is signed by all parties to the agreement.

10. Termination of the MOU:
This MOU may be cancelled upon 90days written notice by either the IRS or the Oregon Housing and Community Services Department, or immediately by signed agreement of the IRS and the Oregon Housing and Community Services Department.

11. Limitations:
The terms of this Agreement are not intended to alter, amend, or rescind any current agreement or provision of federal law now in effect. Any provision of the MOU which conflicts with federal law will be null and void.

Approvals

District Director Internal Revenue Service	Director: Oregon Housing and Community Services

Form **8821**

(Rev. September 1998)

Department of the Treasury
Internal Revenue Service

Tax Information Authorization

► **IF THIS AUTHORIZATION IS NOT SIGNED AND DATED, IT WILL BE RETURNED.**

OMB No. 1545-1165

For IRS Use Only

Received by:

Name ____________

Telephone (______) ____________

Function ____________

Date ______/______/______

1 Taxpayer information.

Taxpayer name(s) and address (please type or print)	**Social security number(s)**	Employer identification number
	Daytime telephone number ( )	Plan number (If applicable)

2 Appointee.

Name and address (please type or print)

OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT
1600 STATE STREET
SALEM OREGON 97301-4246

CAF No. ____________
Telephone No. (______) ____________
Fax No. (______) ____________
Check if new: Address ∀ Telephone No. ∀

3 Tax matters. The appointee is authorized to inspect and/or receive confidential tax information in any office of the IRS for the tax matters listed on this line. *Instructions for column **(d)**: Any related federal tax information pertaining to low-income housing credits, including audits findings and assessments.

(a) Type of Tax (Income, Employment, Excise, etc)	**(b)** Tax Form Number (1040, 941, 720, etc.)	**(c)** Year(s) of Period(s)	**(d)** Specific Tax Matters (see instr.*)
Income		**1996 to 2003**	**Any related federal tax information pertaining to low income housing credits, including audits, findings, and assessments.**

4 Specific use not recorded on Centralized Authorization File (CAF). If the tax information authorization is for a specific use not recorded on CAF, check this box. (See the instructions on page 2.) .... ► ☑
.... If you checked this box, skip lines 5 and 6.

5 Disclosure of tax information (you **must** check box 5a or b unless box 4 is checked):

a If you want copies of tax information, notices, and other written communications sent to the appointee on an outgoing basis, check this box .... ► ☐

b If you do not want any copies of notices or communications sent to your appointee, check this box .... ► ☐

6 Retention/revocation of tax information authorizations. This tax information authorization automatically revokes all prior authorizations for the same tax matters you listed above on line 3 unless you checked the box on line 4. If you do not want to revoke a prior tax information authorization, you MUST attach a copy of any authorizations you want to remain in effect AND check this box .... ► ☐
.... To revoke this tax information authorization, see the instructions on page 2.

7 Signature of taxpayer(s). If a tax matter applies to a joint return, **either** husband or wife must sign. If signed by a corporate officer, partner, guardian, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute this form with respect to the tax matters/periods covered.

Signature	Date	Signature	Date
Print Name	Title (if applicable)	Print Name	Title (if applicable)

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Change To Note. New column **(d)** is added to line 3 for specific tax matters. Use column (d) to specify tax information that is to be provided by the IRS. See the line 3 instructions on page 2.

Purpose of form. Form 8821 authorizes any individual, corporation, firm, organization, or partnership you designate to inspect and/or receive confidential information in any office of the IRS for the type of tax and the years or periods you list on this form.

Form 8821 does not authorize you appointee to advocate you position with respect to the Federal tax laws; to execute waivers, consents, or closing agreements; or to otherwise represent you before the IRS. If you want to authorize an individual to represent you, use **Form 2848**, Power of Attorney and Declaration of Representative, instead of Form 8821. You may file your own tax information authorization without using Form 8821, but it must include all the information that is requested on the form.

Taxpayer identification numbers (TINs). TINs are used to identify taxpayer information with corresponding tax returns. It is important that you furnish correct names, social security numbers (SSNs), individual taxpayer identification numbers (ITINs), or employer identification numbers (EINs) so that the IRS can respond to your request.

Fiduciaries. A fiduciary (trustee, executor, administrator, receiver, or guardian) stands in the position of a taxpayer and acts as the taxpayer. Therefore, a fiduciary does not act as an appointee and should not file Form 8821. File **Form 56**, Notice Concerning Fiduciary Relationship, to notify the IRS of the existence of a fiduciary relationship. If a fiduciary wishes to authorize an appointee to inspect and/or receive confidential tax information on behalf of the fiduciary. Form 8821 must be filled and signed by the fiduciary acting in the position of the taxpayer.

Partnership items. Sections 6221-6231 authorize a Tax Matters Partner to perform certain acts on behalf of an affected partnership. Rules governing the use of Form 8821 do not replace any provisions of the above-referenced sections.

Filing the tax information authorization. File the original, photocopy, or facsimile transmission (fax) of Form 8821 with each IRS office in which you want your appointee to inspect and/or receive confidential tax information on your behalf. If Form 8821 is filed for a matter currently pending before an office of the IRS, such as an examination, file the authorization with that office. Otherwise, file the authorization with the service center where the related return was, or will be, filed. See the instructions for the related tax return for the service center addresses. Form 8821 must be received by the IRS within 60 days of the date it was signed and dated by the taxpayer.

Specific Instructions

Line 1—Taxpayer information

Individuals. Enter your name. TIN, and street address in the space provided. If a joint return is used, also enter your spouse's name and TIN. Also enter your EIN if applicable.

Corporations, partnerships, or associations. Enter the name, EIN, and business address.

Employee plan. Enter the plan name, EIN of the plan sponsor, three-digit plan number, and business address of the plan sponsor.

Trust. Enter the name, title, and address of the trustee, and the name and EIN of the trust.

Estate. Enter the name, title, and address of the decedent's executor/personal representative, and the name and identification number of the estate. The identification number for an estate includes both the EIN, if the estate has one, and the decedent's TIN.

Line 2—Appointee. Enter the name of your appointee. Use the identical name on all submissions. If you wish to name more than one appointee, indicate so on this line and attach a list to the form.

Note: *Only the first three appointees you list will be input on the CAF.*

Enter the nine-digit CAF number for each appointee. If an appointee has a CAF number for any previously filed Form 8821 or power of attorney (Form 2848), use that number. If a CAF number has not been assigned, enter "NONE", and the IRS will issue one directly to your appointee.

The CAF number is a number that the IRS assigns to appointees. The appointee must use the CAF number on all future Forms 8821 or 2848. The IRS does not assign CAF numbers to requests for employee plans and exempt organizations.

Line 3—Tax matter(s). Enter the type of tax, the tax form number, the years or periods, and the specific tax matter. Enter "Not applicable", in any of the columns that do not apply.

In **column (c)**, write the years using the YYYY format, for example, "1998". **Do not** use general references such as "all years", or "all periods". If you do , your application will be returned.

You may list any prior years or periods, but for future periods, you are limited to the 3 future periods that end no later than 3 years after the date Form 8821 is received by the IRS. For **employment tax** or **excise tax** returns, enter the applicable quarters of the tax year. For **excise tax** returns, enter the date of the taxpayer's death instead of the year or period.

In **column (d),** enter any specific information you want the IRS to provide. Examples of column (d) information are: transcript of an account, a balance due amount, a specific tax schedule, or a tax liability.

For requests regarding a **foreign certification** shown on **Form 6166**, Certification of Filing A Tax Return, enter "Form 6166" in column (d) and check the box on line 4.

Line 4—Specific use not recorded on CAF. Generally, the IRS records all tax information authorizations on the CAF system. However, authorizations relating to specific issue are not recorded.

Check the box on line 4 if Form 8821 is filed for any of the following reasons: (1) requests to disclose information to loan companies or educational institutions, (2) requests to disclose information to Federal or state agency investigators for background checks, (3) civil penalty issues, (4) trust fund recovery penalty, (5) application for EIN, and (6) claims filed on **Form 843**, Claim for Refund and Request for Abatement. If you check the box on line 4, you appointee should submit a copy of Form 8821 with each written request to receive information by mail or bring a copy of Form 8821 to each appointment to inspect or receive information. A specific use tax information authorization does not automatically revoke any prior tax information authorizations.

Line 6—Retention/revocation of tax authorizations.
Check the box on this line and attach a copy of the tax information authorization you do not want to revoke.

To revoke an existing authorization, send a copy of the previously executed Form 8821 to each IRS office where it was filed. Write "REVOKE" across the top of the form and sign your name again under the existing signature (line 7). If you do not have a copy of the prior Form 8821, send a letter to each IRS office where you filed it. The letter must indicate that the authority of the tax information authorization is revoked and must be signed by the taxpayer. Include the name and address of each appointee whose authority is revoked.

Note: *Filing Form 8821 does not revoke any Form 2848 that is in effect.*

Line 7—Signature of taxpayer(s).

Individuals. You must sign and date the authorization. **Either** husband or wife must sign if Form 8821 applies to a joint return.

Corporations. Generally, Form 8821 can be signed by: (1) an officer having legal authority to bind the corporation, (2) any person designated by the board of directors or other governing body, (3) any officer or employee on written request by any principal officer and attested to by the secretary or other officer, and (4) any other person authorized to access information under section 6103(e).

Partnerships. Generally, Form 8821 can be signed by any person who was a member of the partnership during any part of the tax period covered by Form 8821. See **Partnership items** above.

Other. See section 6103(e) if the taxpayer has died, is insolvent, is a dissolved corporation, or if a trustee, guardian, executor, receiver, or administrator is acting for the taxpayer.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. Form 8821 is provided by the IRS for your convenience and its use is voluntary. If you designate an appointee to inspect and/or receive confidential tax information, you are required by section 6103(c) to provide the information requested on the form. Under section 6109, you must disclose your social security number (SSN), employer identification number (EIN), or individual taxpayer identification number (TIN).

Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia for use in administering their tax laws. We may also give this information to other countries pursuant to tax treaties.

You are not required t provide the information requested on a form unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Disclosure of the information of this form may be made as provided in section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping,** 7 min.; **Learning about the law or the form,** 12 min.; **Preparing the form,** 24 min.; **Copying, assembling, and sending the form to the IRS,** 20 min.

If you have comments concerning the accuracy of these time estimates, or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send Form 8821 to this address. Instead, see **Filing the tax information authorization** on this page.

EXHIBIT E

RD MOU

MEMORANDUM OF UNDERSTANDING
Between the
Oregon Housing and Community Services Department
and
Oregon USDA Rural Development Rural Housing Services

INTRODUCTION

The Rural Housing Service of Rural Development, Oregon, an Agency of the U.S. Department of Agriculture, hereinafter referred to as "RHS", and the State of Oregon Housing and Community Services, hereinafter referred to as "OHCS", wish to enter into the following Memorandum of Understanding (MOU) regarding 1) the general sharing of housing development information, 2) architectural requirements for joint funded RHS and OHCS developments, 3) the sources and uses of funds in projects receiving RHS funding and low income housing tax credits, 4) the monitoring of low income housing tax credit compliance in RHS funded projects, and 5) the availability of low income housing tax credits for proposed RHS funded projects.

RHS administers loan and grant programs authorized by Sections 514, 515, 516, 533, and 538 of the Housing Act of 1949, which provides financing for housing for very low and low income tenants in rural areas. The Section 515, 514/516, and 538 programs are administered at the State Office level and complies with all applicable Civil Rights and Fair Housing laws. The Internal Revenue Service (IRS), through Section 42 of the Internal Revenue Code, provides tax credits which are administered through the OHCS to encourage developers to provide affordable housing and participate in programs such as Section 515, 514/516 and 538.

BACKGROUND

The IRS published regulations on September 2, 1992 to guide State agencies in monitoring compliance with the low income housing tax credit requirements by owners of affordable housing properties. These regulations allow the State agency to implement review requirements that allow exceptions to the requirements to review tenant certifications, supporting documentation, and rent records of such properties to owners of RHS financed properties. However, for OHCS to grant review exceptions on RHS financed properties, OHCS must enter

into an agreement identified as a Memorandum of Understanding (MOU) with RHS whereby RHS will agree to provide OHCS with information concerning the income and rent of the tenants in the project. OHCS may assume accuracy of the information provided by RHS without verification. The original OHCS-RHS MOU signed 5-17-1993, and extended on 6-17-1994, expired on May 17, 1995. This year 2000 MOU reinstates the original MOU provisions and identifies additional considerations related to the exchange of project information and reservation of tax credits for RHS financed projects.

SCOPE OF AGREEMENT

Under this agreement, the RHS, through the Oregon State Office of USDA Rural Development, and OHCS agree to engage in cooperative efforts to 1) identify housing development activity which is mutually supportive of agency missions or is in conflict with similar housing, 2) enable RHS to assure that only the necessary financing is provided through the section 515, 514/516 and 538 programs, 3) enable OHCS to fully evaluate the tax credit project request of RHS funding applicants, including architectural requirements of OHCS, 4) enable OHCS to effectively monitor compliance of RHS borrowers who have tax credit requirements, as provided in Section 42 of the IRS Code, and 5) assure a minimum amount of low income housing tax credits are available to qualified RHS funded projects.

PURPOSE

The purpose of this document is to establish the general conditions under which RHS and OHCS agree to cooperate, exchange information, and provide mutually beneficial project support.

BOTH PARTIES AGREE

GENERAL INFORMATION

1. The general information shared under this MOU is for internal analysis and will not be disclosed to other than the appropriate RHS and OHCS employees. Specific information regarding individual proposals may be shared with the applicant/sponsor and other providers of funds for respective projects as appropriate and authorized by the proposal sponsor.

2. RHS and OHCS will inform any applicants seeking both low income housing tax credits and RHS loan assistance that the MOU will be applied to the processing of their applications with OHCS and RHS.

3. RHS will participate in public meetings/hearings each year as held by OHCS to assist in the development of the Housing Credit Allocation Plan. OHCS will accept within the limitations of the public solicitation for Allocation Plan comments, RHS material presented in efforts to retain the USDA Rural Development set-aside of credits.

4. RHS will inform OHCS each fiscal year of the amount of program funds allocated to Oregon or available as part of any Notice of Funding Availability (NOFA) issued by RHS National Office. A copy of the NOFA published in the Federal Register will be provided OHCS upon request.

5. RHS will provide OHCS information concerning any 533 Housing Preservation Grant (HPG) funds awarded in Oregon for rehabilitation of a multi-family project or single family rehabilitation program.

6. In order to avoid duplicative or competitive local housing development, after selection of Sections 514, 515, 516, 533,or 538 loan requests for further processing, RHS will forward basic project information to OHCS for review and comment. OHCS will similarly forward a list of project funding considerations for RHS review and comment.

PROJECT SPECIFIC INFORMATION

7. Information will be shared on estimated and/or actual project costs for properties financed by RHS that are anticipated to receive low income housing tax credits. RHS agrees to provide OHCS the following information/forms, as applicable, for projects being considered for or receiving RHS program(s) funding:
   a. Current processing list of pre-applications and applications updated at least semi-annually.
   b. Copy of any AD-622, "Notice of Pre-application Review Action" issued to the applicant requesting a complete application.
   c. Copy of Form SF 424, "Application for Federal Assistance"; Form FmHA 1930-7 "MFH Project Budget"; Form FmHA 1924-13 "Estimate and Certificate of Actual Cost"; legal description; market value determined by appraisal.
   d. Copy of Form FmHa 1944-51 MFH Obligations – Fund Analysis for each loan approved and obligated.
   e. Copy of Form FmHA 1944-7 MFH Interest Credit Agreement indicating the borrower's 1% monthly loan payment.
   f. Copy of Form FmHA 1924-13 "Estimate and Certificate of Actual Cost" indicating actual costs when construction is complete, including any cost analysis performed.

8. The following fee limitations will be adhered to:
   a. builder's profit: up to 6% (as per QAP) of the construction cost as established by contract(s);
   b. general overhead: up to 2% (as per QAP) of the construction cost as established by contract(s);

   c. general requirements: up to 6% (as per QAP) of the construction cost as established by contract(s);

d. developer's fee: up to 15% of the total development costs for tax credit purposes for new construction and rehabilitation costs; up to 5% of the acquisition cost for acquisition/rehab projects. (See attachment 1, Developer Fee Schedule.)

Rural Development staff and OHCS staff will review, at least annually, the fee norms on builder or general contractor charges (builder's profit, builder's overhead, and general requirements) established by this MOU. The developer's fee or any other fees allowed will also be reviewed. Any revised fee norms will be added as an amendment to this agreement and be used in subsequent analysis of loan or credit requests.

9. The above fee norms will be used in the OHCS analysis of the amount of assistance that is necessary for a proposed project. In all cases where the results of an analysis indicate that there will be excess assistance (defined as more than the lesser of $25,000 or 1 percent of the total development cost as authorized by OHCS), RHS will consult with the applicant and OHCS to strive to reach an agreement for reducing the excess assistance. The following are examples of actions that can be taken:
    a. reducing the amount of tax credit units requested, or
    b. reducing the level of assistance provided by one or more of the funding sources, or
    c. revising the uses to include eligible costs for any funding participants, provided the project enhancement is consistent with the intent of the RRH program and will assist the resident population being served by the housing.

Parties to this agreement understand that in the event that excess assistance is not reduced through other means, RHS will adjust the amount of equity contribution (through the reduction of the loan) to ensure that RHS assistance provided is not more than is necessary to provide affordable housing, after taking account of assistance from all Federal, State, and local sources. Any reduction pursuant to this paragraph will require formal notification to the applicant, OHCS, and RHS National Office.

10. OHCS will provide RHS with:
    a. A list of all funded tax credit applications including project name and location, number of units, tax credits requested, amount of reservation, and project preference(s), if any.
    b. A copy of the reservation letter sent to the applicant/sponsor.
    c. A copy of the detailed cost breakdown used to estimate the amount of tax credits for which the developer would be eligible for those applicants that are seeking RHS financing.
    d. IRS Form 8609 "Low Income Housing Credit Allocation Certification" with a copy of the cost data used to determine the development cost of the RHS financed projects.

11. RHS will provide OHCS with the name of Section 515, 514/516, 538 borrowers receiving tax credits who are in default on their RHS loan. OHCS will provide RHS

with information concerning borrowers who, to the knowledge of OHCS, are in non-compliance with tax credit requirements.

TENANT AND MONITORING INFORMATION

12. RHS will require signatures of all household members18 years of age and over, as required by IRS Code on tenant certifications. RHS will require as a part of project management, and consistent with OHCS policy, use OHCS .1, Low Income Housing Tax Credit Program Tenant Certification (Form TIC-1) for all placement and move-in certifications, in addition to any other administrative forms required by RHS. The OHCS initial certification form will be required to be dated effective on or before tenant move-in.

13. Parties to this agreement understand RHS does not certify tenant tax credit income eligibility, nor does RHS certify to the owner's compliance with the requirements of Section 42, only that RHS tenant income is based upon certification or annual recertification, and that certification and recertification requires third-party verification. The owner certifies the information to RHS as being true and correct representations, and RHS performs periodic reviews and analysis of the data to verify compliance with RHS requirements.

14. RHS will provide OHCS with annual data concerning tenant income on affected RHS properties. Such data will be in a standard report format from the Multiple Family Housing Tenant File System (MTFS) database. The report will be signed and dated by RHS Servicing Specialist and will indicate the data is considered correct by RHS.

15. OHCS will accept the RHS physical inspection findings in lieu of conducting a separate inspection. Such findings shall be available for review prior to any OHCS audit and OHCS shall reserve the right to inspect as necessary to satisfy IRS code. File audits will continue to be conducted by OHCS as established by OHCS policy and procedures.

TAX CREDIT SET ASIDE FOR RHS PROJECTS

16. OHCS will set-aside 15% of the state allocation of credits for USDA Rural Development 515, 514/516, 538 (interest credit, only) program eligible projects and other rural/farmworker targeted projects. A reservation or allocation of tax credits from this set-aside will be limited to projects that receive direct funding from RHS or meet rural/farmworker housing targets. The following additional conditions apply:
    a. Projects receiving support in the way of a loan guarantee only, or other similar support, will not be considered for a reservation or allocation from the USDA Rural Development set-aside solely due to the loan guarantee participation.
    b. Tax credit applications will be processed in the regular OHCS funding competition cycle. If RHS is unable to issue a certification of the availability of funding by the date OHCS receives notice that National Pool Tax Credits will be available, the RHS

project related tax credit reservation may be canceled and that portion of the Rural Development set-aside reallocated as appropriate.

c. The Rural Development set-aside is not an "entitlement" pool, but rather a "reserve" of credits for RHS project proposals that meet the OHCS scoring criteria. The purpose of the set-aside is to assure tax credits are available for RHS projects that meet scoring thresholds, but otherwise would not receive credits due to the competition from other higher scoring projects.

HOME Designated Units with RD Rental Assistance

17. HOME designated units in Rural Development financed projects will be treated as 'tax credit' units as described in Administrative Notice No. 3209 (1930-C). Accordingly:
    a. Such treatment will allow tenant selection to be deferred until applicants for occupancy are available whose eligibility will allow the borrower/sponsor to meet HOME program obligations.
    b. Rural Development Rental Assistance (RA) assigned to the designated HOME unit(s) will be retained; transfer of the RA to other eligible project tenants will not occur as otherwise would be required with RD financed developments.

    c. The project owner is responsible for any cash flow deficits in the annual project budget as a result of applying this practice so far as Rural Development is concerned.

OHCS Architectural Requirements

18. In RHS/OHCS jointly funded projects, OHCS architectural standards will be adhered to as applied by the OHCS Architectural Consultant with consideration for RHS architectural constraints. OHCS architectural standards are published annually in both the OHCS funding application packages and in the Low Income Housing Tax Credit Qualified Allocation Plan.

PERIOD OF AGREEMENT

This agreement will remain in effect until terminated by written 30 day notification to either party.

MODIFICATION OR AMENDMENT PROVISION

This agreement may be modified by written agreement of RHA and OHCS. Requests for amendments to the agreement will be initiated by either party through written notification.

ACCEPTANCE AND SIGNATURE OF EACH APPROVING PARTY

Director	Date	State Director	Date
Oregon Housing and Community Services		USDA Rural Development Rural Housing	

Department Services

EXHIBIT F

RESIDENT SERVICES PLAN

Date:________________________

Sponsor:_____________________________________Contact:_______________________

Phone #:____________________________________FAX #:_______________________

Management Agent:____

Project Name:____

Project Location:____

Number of Units:_________Size of Units (# bedrooms):____________________________

Target Population:____

Income Levels: ____

Projected Number of Children on Site at Full Occupancy:______________________________

Department Funding: TF______HOME ______HELP______LIHTC______OAHTC_______

Other:____

Policy Statement

Sponsors who receive Department Resources must include in their affordable housing development a provision for residents to access services appropriate to the identified needs of the target population.

The anticipated outcomes of the Resident Services Plan are:

1) Through coordination, collaboration, and community linkages, provide residents the opportunity to access appropriate services which promote self-sufficiency, maintain independent living, and support residents in making positive life choices; and

2) To effectively maintain the fiscal and physical viability of the development by incorporating into the ongoing management appropriate services which address resident

issues as they may arise.

Developing the Resident Services Plan
The Resident Services Plan contains four sections, each beginning with a statement of intent. Please complete each section thoroughly and completely. There is no limit to the number of pages you may submit, but please be concise.

Section One: Needs Assessment
The intent of this section is to ensure that the Sponsor will employ a thorough and creative process to research, identify and assess potential service needs of the target population. Contact with the local community including schools, churches, businesses, neighbors, service providers, and other affordable housing developments may be necessary in order to define the needs specific to potential residents. The Sponsor is encouraged to research additional sources, including census information, market studies, and the OHCS OMNIPLAN. Assumptions based on the Sponsor's prior experience in designing services for this target population are also valuable.

Describe in detail the service needs of the target population:

Describe the methods used, and identify the sources consulted in determining the service needs of the target population:

Section Two: Identification and Coordination

The intent of this Section is to demonstrate that the Sponsor has made linkages in the local community and the network of service providers in order to establish roles and relationships in coordination of services for this development. The Sponsor is encouraged to initially investigate an array of possible services and then refine and select those most appropriate to the target population.

Describe the methods used to identify the available services in the community, including efforts to coordinate and collaborate on the design of the Resident Service Plan:

Section Three: Implementation

The intent of this section is to define the logistics of the Resident Services Plan. List each specific service selected as appropriate for the target population, state in measurable terms the anticipated result of providing the service, and identify the provider of the service. Description of how the delivery of services will occur and be funded is critical to this section.

Complete the table below:

SERVICE PROVIDED	***ANTICIPATED RESULTS***	***SERVICE PROVIDER***

Describe the delivery of resident services. Who is responsible for implementation of the service plan, and will services be offered on-site or on a referral-basis to other providers?

Describe how the physical amenities of the project will be utilized in implementing the provision of services: (i.e.: use of the community room, etc.)

List the sources and amounts of additional resources, if any, that will be used to implement the Resident Services Plan. Include a statement describing how services will be funded on an ongoing basis. Indicate if a collaborative agreement, a memorandum of understanding, or a contract has been negotiated in order to provide appropriate services to the target population:

Section Four: Evaluation and Coordination with Management

The intent of this section is to establish a method of evaluating the effectiveness of the Resident Services Plan and create the essential link to ongoing management of the development. Evaluating the plan will ensure, that as resident populations are often in flux, the services can be adapted to changing needs. Effective delivery of services must be coordinated with the management agent, especially the on-site staff.

Describe the methods used to evaluate the specific services offered, including how and when the anticipated results will be measured:

If results are not as anticipated, describe what corrective action will be taken:

Describe your criteria for selecting a management agent, committed to coordination of resident services, including the hiring and training of a service sensitive staff:

Describe the process of ensuring ongoing coordination of the Resident Services Plan with the proposed management agent:

EXHIBIT G

COMMENT LETTERS WITH RESPONSE LETTERS

Minutes and Comments from the Public Hearings:

Two public hearings were held for the purpose of considering revisions and changes for the 2005-6 State of Oregon, Qualified Allocation Plan for the Low Income Housing Tax Credit Program or QAP. Theses hearings were held on March 16, 2004 in The Dalles and March 18, 2004 in Salem.

The March 16th hearing was opened for public comment at 11:15 a.m. and was closed at 12:45 p.m. There was no one in attendance to provide testimony or comment.

The March 18th hearing was opened for public comment at 10:10 a.m. Three persons gave testimony. The hearing was recorded as follows:

Dan Freedman, Freedman Associates LLC, former OHCS LIHTC Representative:

"This is the public hearing for the proposed changes to the Qualified Allocation Plan (QAP) for 2005-2006. I am Dan Freedman, acting as a consultant to the Low-Income Housing Tax Credit Program, along with the acting LIHTC Manager, Karen Clearwater, and Susan Bailey, the administrative assistant to the program. She is here taking notes and recording the hearing. Your comments will be recorded, transcribed and provided to you, and those on our QAP mailing list, in writing. This takes approximately 1-2 weeks. After the comments are responded to, and digested by staff, OHCS takes the document to the Housing Finance Committee, and then to Housing Council. The Housing Council will be introduced to the draft document at the March meeting, tomorrow. They will have the opportunity to discuss the changes and is expected to approve the document at the April meeting. The document is then sent to the Governor. Once the Governor signs it, sometime in May, then the old QAP with the changes that are suggested and incorporated becomes the official QAP for the State of Oregon. Applicants for tax credits will be subject to the requirements of the QAP as of the date the Governor has signed it.

The purpose of this hearing is to offer your testimony, ideas, and suggestions. It is not an opportunity to debate the merits or have a discussion with us about how we do business at the Department. It is simply your opportunity to give your input on the proposed changes to the QAP, or other items in the plan you want to address."

Comments Provided By: Diana Cvitanovich:

"I think there is a concern when you have policy that includes language such as 'other considerations as deemed appropriate at the sole discretion of the Department.' Certainly, you want flexibility in your procedures, but not ambiguity in your policies. I think this language is concerning. I would ask the Department be clearer in its goals and give some examples of what these other consideration are… readiness to proceed, previous experience, demonstrated readiness to proceed (that's a huge goal of the CDBG program, and it works quite well). It gives the Department a chance to say 'this is what we're talking about when we say sole discretion.'

Again, I'd like to see flexibility in your procedures, but not ambiguity in your policies. I think the Department has something in mind when it says, 'other considerations as deemed appropriate at the sole discretion of the Department', and I used readiness to proceed as an example. What I mean is that if the Department has something in mind here, let's say it in policies, but let's be flexible enough that you can exercise discretion in the Department, but I think you might be asking for some real challenges if we don't get some clarity here."

Comments Provided By: Anna Geller:

"I support Diana's comments. My name is Anna Geller of Geller, Silvis and Associates, Portland, Oregon.)

First, I'm going to give general remarks. I think there are a number of excellent clarifications in the QAP, and things that will provide guidance on matters we haven't seen in prior markets. Those are being addressed, so people know what the process is. I am thinking especially of the rate lock section. These are things that have come up, in relatively, the last couple years in the interesting environment that we're in, and I think it is really good that we're going out and being as clear as possible about how the Department wants us to handle that.

I am going to do housekeeping first. Clearly there are a number of confirmation issues in the document that I know your staff will handle that. That means basically, following through that changes get made consistently throughout the document. On page 46, policy on disbursement on units, you mean dispursement. That's the word you're looking for.

One of the things that we're noting here is on page 13. The subject really has to do with the changes indicated…that the Department reserves the right to determine at its sole discretion whether letters of interest or intent are acceptable. I have a question about how many fraudulent letters of intent for financing commitments or similar items has the department received. There is no explanation for the change. If the process has been undermined by fraudulent representation, that to me goes right back to the bad actor language that Diana was referring to. Otherwise, I think you are under violation of Section 42(m)(2)(a) in your responsibilities for establishing the QAP to evaluate such letters. Evaluate does not mean at sole discretion. Once again, as Diana pointed out in another section, you have criteria. I think it would be very good for the public to know. In order to give recognition of what is happening with scarce resources what are the concerns or failure or things like this that you may believe are fraudulent in the program? I don't think you are right in doing this. I don't think you're in compliance of the requirements of the code. And I also think that if it is not helpful to people to have this kind of language without some idea, including the part Diana was talking about. Additionally, the Department in the last few years has adopted nomenclature of a business culture as opposed to an administrative culture. That nomenclature includes nouns such as "partner" and "partnership" and "customer service". I think to the extent that you want to create that relationship with your customers, having prescriptive or sole discretionary type of language is not fostering that kind of relationship.

Going back, you have a good paragraph in here about the 'allocation plan and the documents included herein by reference', on page 14. You're essentially saying that the provision of Section 42 (of the Internal Revenue Service Code) or the State Administrative Rules will take precedence. I think that is a complete misnomer.

With respect to page 25, 'LIHTC applicants are required to complete a final application'. These final approvals (applications) need to recognize approvals given along the way. Approvals that (occur when) the applicant/sponsor/developer calls the person (state contact) in connection to the relationship (project) and seeks guidance. Then years later, at final approval, sometimes, the progressive guidance is not recognized.
On page 25, I do not understand the evaluation process under 'H. Public Housing Waiting Lists, and, as a State of Oregon requirement'. We appear to be carrying out a policy that was implemented last year, where the Director essentially is the sole decision maker ultimately approves the deal. To the best of my knowledge, there is no requirement that a competitive, 9% application, can on its own, com(e)ing to the Housing Council. So potentially the Director has the sole discretion over what is now, a $6.4 million dollar (annual progam). From a public administration stand point, that is a very risky thing to do. It's probably not recommended by NCSHA (National Council of State Housing Agencies), and if nothing else (fails) to protect the director.

Going to Ms. Cvitanovich's point, page 29, 'capacity of previous program participation includes but is not limited to the past performance of any member of the development team.' I think the contractor's board is a really good thing to include. I'm curious and I think you have a responsibility to define, and make more specific, the kind of things you include. At the sole discretion of the Department implies that you are not going to give any reason, and again it is not consistent with the partnership and the amount of money that people are spending to get into a situation. They may be inadvertently working with a lender that you can not rely on, with letters you may not accept. They may not know that. So, I am not sure what you have in mind here. One thing I would really recommend (is) to define some of these terms.

I'd like to know how many times developers have come back with a troubled project and asked for additional allocation. This is something that happens a great deal (and) there is no process for it. So while you may be worried about fraudulent lenders or funding sources, (the department still wants) to have sole discretion over this matter. I think that is pretty amazing. I'm much more surprised how many troubled projects get bailed out. It is something you would want to include in such a definition.

Under financial feasibility, 'primary debt service ratio (DCR) is recommended to be 1.15 to 1.0. I would recommend that you define (this DCR) as 'primary' DCR. It can actually be defined two ways, must-pay or soft-pay, or no-pay (or not, actually). So you may want to clarify that. I think you mean the first mortgage needs to be 1.15 to 1. And you've included the Rural Housing Service, but maybe talk about other programs you work with, like PDC (Portland Development Commission). I know they don't have that kind of DCR. I am sorry to see (that) we are really going to enforce a 1.15 DCR. I think you are going to miss some good opportunities, and wish you had not done that. There's always a project or two, like special needs, where you will wish you hadn't required 1.15. Maybe that is why you use the word 'recommend'. It is not clear to me whether the 1.10 to 1 cap is at the time of placed in service or the 1.20 to 1 cap (applies) through out the time of operation. If you do expect the 1.20 to 1 cap, you may have some troubled projects. You are going to set people up to a very difficult situation, inadvertently I know, but it could occur that they can't pay or even attempt to achieve your other requirements.

It is important to note that minimum replacement reserves required will effect DCR. You will need to consider what (an increase in replacement reserves) this is going to do to the sponsor's ability to deliver the desired product. The DCR requirement (represents) a change to (underwriting)standards. For example digital inclusion requirement is running as a deficit currently. If you require this service, are you going to include that in the DCR requirement? I seriously support your initiatives, like digital inclusion,

but right now they don't pencil. So they're might be a problem with 1.15 to 1 DCR. You need to define what you want here.

Page 30, you do have 'sole discretion whether the Letters of Interest or Intent' -- again the issue with 'sole discretion' as I've discussed.

I want to suggest that as you look at returned credits. When you arrange to fix or clarify the QAP, like the DDA clause, those credits need to be returned not exchanged. They need to be returned and used on other projects. I am sure you are aware of that. I want to see more clarification on how you are handling returned credits. As you know the (LIH
TC program) does not recognize a swap. Consider if that is your job.

One last comment. Just as you are recognizing (OHCS specific) requirements you are required to establish certain specific priorities (included in IRS) Section 42. I have not seen (these) recognized.

That concludes the public record I wanted to make. This QAP is an improvement over last years."

Comments Provided By: Diana Cvitanovich, Linn County Affordable Housing:

"I'd just like to support key particular items that I heard Ms. Geller discuss. One is the notion of partnership in the Department, and the people who are putting tax credit projects on the ground. Out of that I recognize the real concern of what the real cost of managing some of these tax credit properties consists of (including) when we talk about increasing DCR and (including) other mandates, like resident services and digital inclusion. I think these kinds of issues ask for some real cost analysis between the people who are putting this on the ground, and holding it as managing partners, partners who are working very hard to make these tax credits available. I think there are some real concerns between these goals (which are good into themselves) and the reality of what is happening in real life. I really would recommend, that not just the Department, but the Department in relationship with partners (like they did with the CFC application) (perform) some good cost analysis. I think that is something that will help us get our goals ironed out.

I would like to end by saying that I really appreciate the fact that we're able to see and respect that we now have a group of people in this State with experience in tax credits that we have not seen. So anytime someone suggested that we have relationships that are adult to adult, rather than adult to child relationship, that we are able to work together to make these work better. I respect the fact that the Department has worked very hard to develop these guidelines. We can find solutions that work for both of us."

Comments Provided By: John Blatt, Executive Director of Association of Oregon Communtiy Development Organizations (AOCDO):

"Our comments are not that lengthy. In general, AOCDO supports the changes that were made to the QAP. We think that most of them quite good. We just have some clarifications and some directional comments that we want to make about the QAP.

The first one is around the increase in the DCR. We think this is a good change. We think that increasing the DCR to 1.15 is a good thing to do, and quite a few of my members already try to underwrite at 1.15.

What our concern is looking to how you are going to achieve that, away from rent increases. We don't want to see rents going up as a way to achieve that 1.15 or higher. I think we are going to need deeper subsidy in the projects, and we understand that. But we think it may help your projects, instead of producing the greatest number of units, because from our experience even projects at 1.15 have a pretty thin. We want to see projects at higher DCR but don't want to see projects at higher rents. We have a difficult enough time trying to make rents affordable and meeting the markets in some areas. This would make that harder. And so, that is one of our big concerns.

In looking at that, we haven't done an analysis, but several of my members wanted to look at comparing the limits in some of your other programs (that) are likely to end up being the gap sources, like CDBG and HOME, and maybe even the tax credit program itself. In looking at the per unit and per project (cost) limitations (we must make sure) we don't get into a situation where there is not enough equity put into a project to reach the (desired) DCR. We have no hard numbers, but based on their experience, some of my members felt that some of the CDBG and HOME limits won't let us get deep enough subsidy on a per unit or per project basis. Some brought up the possibility of coming up against the $700,000 cap, when you finally figure out what your basis is going to be. So, let's look at that before it becomes a problem.

We also wanted to comment about the maximum DCR of 1.20. Several of our members that develop special needs projects, said they are often above the 1.20 because of the low level of debt that they have and requirements that support their services out of rent dollars. That is likely to be the kind of exception you're going to see coming through.

The more rural members feel vulnerable to changes in low DCR. They would like to see higher DCRs like 1.20 to 1.25. Depending on where they are, like places with small population base or a narrow economy, based on one or two products, they will experience more vacancy problems. So they need higher DCRs. We've seen problems arise out of those situations. So that's were you'll see requests for exceptions to the maximum DCR.

Several of my members wanted to address the Department's current policy on how it handles exchanges of tax credit years. They feel that the way the Department operates now is to talk to the project developers and work with them to decide that their project can make an exchange. This is in the cases where you need to accelerate your project. They feel the Department has been very constructive in its approach, but wanted to see more language in the QAP regarding the consultation with recipients who are going to (need) to accelerate the project and review all their plans. (This process needs to me more of) a cooperative process; not that it s not the way the department is doing it. But we want to see if codified in the QAP as an approach.

Our last comment is about discretion. We don't want to say that we don't think the Department has the ability to exercise discretion. It is just that several of our member are starting to see discretion in a lot of different areas. And lot of our members felt that (discretion) is taking the place of guidance. So they are getting into projects, and doing things a certain way, and then the Department is looking at them and saying this is not adequate, this is not the way we wanted you to go. And they don't have any way of knowing that with out the guidance. And so particularly the members would like more guidance around letters of intent or letters of commitment from financial institutions or investors. There is weird stuff that people write into (the letters of commitment) sometimes, and you really need some discretion with those. Several of our members have had instances where they've had a letter they thought had been approved before, or substantially similar to letters that had been approved before, and then the Department says,

"No, this does not meet our standards". We know you can not define or anticipate everything, but more of an effort to define: "these kinds of things are unacceptable", and "these are the kinds of things we are looking for". It doesn't happen very often, but when time and effort is put out, it's too bad to have the Department come back and say "we don't think this commitment is on track". It could have been if we knew that certain language was not acceptable or certain approaches to making the commitment were not acceptable, then we could have corrected that problem before it came to the Department.

A couple members mentioned that in the part about 'changes in financing that may result in tax credits can be revoked', is the same kind of thing. As you are going through the project, and when terms change they want to know when they need to talk to the Department about the changes and when they don't. They don't want to submit an application or a final application, and then find out this is really not going to work. This is a matter of clarification and guidance. Somebody went through the QAP and found "discretion" in 32 different places. We want more focus on guidance.

That's the quick summary of our comments. I have several copies of the comments written out that I will turn into you."

Public hearing was closed at 11:50 a.m.

OHCS RESPONSE TO QAP COMMENTS

May 18, 2004

Association of Oregon Community Development Organizations
John Blatt, Executive Director
1020 SW Taylor
Portland OR 97205

Dear Mr. Blatt;

Thank you for attending and providing testimony at Oregon Housing and Community Services (OHCS's) hearing in regards to proposed changes for the 2005-2006 Low Income Housing Tax Credit (LIHTC) Qualified Allocation Plan (QAP). I am taking this opportunity to respond to the concerns expressed in your letter to OHCS in regards to the QAP.

OHCS shares your concern with respect to a proposed increase in the required Debt Coverage Ratio (DCR), from 1.10 to 1.15. Note that this higher DCR is a recommendation, i.e., best practice, not a hard and fast requirement. OHCS believes projects with a stronger cash position are better able to adjust to operational cost increases. In fact recent experience suggests that increased project expenses exceed the increases in project income. We agree that we do not want new projects serving higher income clients, nor do we want to see higher rents as a result of using a more conservative DCR. Achieving a project that is financially stronger yet still serves lower income clients is difficult to achieve yet worth the effort. The QAP recommends the higher DCR and provides the applicant with the flexibility to justify why achieving the ratio is not possible. Likewise the department will permit a higher DCR provided the applicant, or the

lender, provides appropriate justification.

The department retains the right to manage the allocation of the tax credits. This insures that the State of Oregon does not lose credits if a project is unable to meet tax credit program time constraints. In order for Oregon to receive part of the National Pool of tax credits OHCS must use (or allocate) its entire allocation of per capital tax credits by the end of each year.

OHCS is working to better define when the department will use its sole discretion in making awards of tax-credits, however we will retain our right to do so. The department will attempt to define what must be included in letters of intent and/or commitment letters from lenders. These requirements will be included in the next CFC application.

I trust I have addressed the issues and concerns in your letter. Your participation in making revisions to the State of Oregon's QAP is especially valued.

Sincerely,

Karen Clearwater
LIHTC Program Representative

AOCDO

Association of Oregon Community Development Organizations

JIM TIERNEY
Community Action Team
President

JOHN SANDUSKY
Community Action Resource Enterprises
Vice President

Lou ENGE
Mainstream Housing
Secretary

MARGARET DAVIDSON
Community Connection of Northeast Oregon
Treasurer

CINDY DYER
ACCESS, Inc.

MAXINE FITZPATRICK
Portland Community Reinvestment Initiatives

KATHI JAWORSKI
Rural Development Initiatives, Inc.

LEON LAPTOOK
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Testimony of the Association of
Oregon Community Development Organizations
concerning the 2005 Qualified Allocation Plan

AOCDO supports the changes made in the qualified allocation plan. We have several areas of interest that we want to highlight.

Increased Debt Coverage Ratios

The first area we want to comment on is the increase in the debt coverage ratios to a minimum of 1.15. As owners and managers of over 10,000 units of affordable housing, increasing the debt coverage ratios and making projects more financially stable is a very good change. However, as mission driven-developers of housing, we are concerned about how these ratios will be reached. In particular, we would like to have more of a discussion with the Department about how to achieve these debt coverage ratios with a minimum impact on rents.

As we see it, the only way to meet the new debt coverage ratios is to increase rents or find more equity.

First, and most importantly to us, we are concerned about the **upward pressure on** rents. The draft QAP references ability to raise rents as one factor in determining adequate debt ratios. Available gap financing is slim in many parts of the state. Therefore, we are concerned that, despite the best intentions of the state, there will be an incentive to raise rents when other gap sources are not available.

This pressure, combined with the substantial reductions in the availability of the Oregon Affordable Housing Tax Credit will create a one-two punch on rent levels that will be hard to resist.

We believe that projects in rural areas will have a more difficult time covering the need for increased equity. Rural and non-entitlement areas tend to have less flexibility to increase rents and less access to gap financing.

AOCDO supports increased debt coverage ratios but wants the department to look to places other than rent increases to meet these ratios.

Review Limits on All Programs

Ultimately, given these realities, the most practical solution to this dilemma is likely to be increases in the amount of funding from the Community Development Block Grant program, the HOME program, and, in some cases, the housing tax credit.

Therefore, we urge the Department to review the per unit and per project limits on these programs to ensure that enough flexibility exists in these programs to provide the funding necessary to meet necessary debt coverage ratios. In the end, we believe achieving these increased debt coverage ratios will result in projects that are easier to manage and better able to withstand fluctuations in the market.

Maximum Debt Coverage Ratios
Next we want to comment on the maximum debt coverage ratio. The draft QAP allows for exceptions and we want to place 2 examples on the record of exceptions we think the Department should consider.

Some developments designed for special needs populations carry a very low level of debt. In some of these cases, the low level of debt may create debt coverage ratios which substantially exceed 1 .2.

Second, we believe that certain market conditions may justify debt coverage ratios which exceed 1.2. In particular, developments in isolated rural areas with small populations and narrowly based economies are particularly vulnerable to high vacancy rates.

AOCDO is bringing this comment to the attention of the Department simply to ensure that the Department is aware that these types of projects may be submitting explanations of higher than average that coverage ratios.

Current Year Exchange of Tax Credits
AOCDO and its members understand the need to exchange tax credit allocation years to ensure the state will not lose potential funding for affordable housing. Indeed, several AOCDO members have agreed to be the recipients of exchanged credits and, therefore, accelerate their projects to meet funding deadlines. AOCDO would like the Department to codify its current practice of consulting with potential recipients of exchanged credits when those recipients will need to significantly accelerate or change their plans.

Guidance and Department Discretion
The Department has over the last several years increased the number of areas in which decisionmaking is at the discretion of the Department. Our comment here arises not from the Department having discretion to make decisions but in the lack of guidance the QAP provides developers in several of the areas of review in which the Department exercises discretion.

AOCDO and its members believe discretion is appropriate but it is not substitute for adequate guidance for applicants. AOCDO would like the Department to provide more guidance to developers in the areas where discretion is particularly critical. AOCDO member report several instances in which commitment letters and other parts of applications where rejected as inadequate when these applications could easily have met the standards if more guidance had been given.

AOCDO understands and is impossible to outline the standard for every possible decision the Department might make, but a greater effort to clarify the Departments position in areas where questions are more common or more critical to an applicant's ultimate success or failure would make the development process more efficient and reliable. This guidance can take the form of including certain common practices or excluding particular practices.

Particularly important to AOCDO members are standards around:

- sufficient letters of intent or letters of commitment to provide financing or equity investment and
- changes in financing that may lead to the revocation of tax credit.

Again, AOCDO generally support the changes made to the QAP, but would like more clarification of the Department's intent to implement its changes.

John D. Blatt
Executive Director

May 18, 2004

Edward Johnson
Oregon Law Center
813 SW Alder St. #500
Portland OR 07205

RE: 2005-2006 State of Oregon Low Income Housing Tax Credit Qualified Allocation Plan (QAP)

Dear Mr. Johnson;

Thank you for your letter of April 1, 2004 in regard to proposed changes to the State of Oregon's QAP for 2005 - 2006. I will respond to the specific issues specifically addressed in your letter.

1. Good Cause Eviction Oregon Housing and Community Services understands your concern in regards to a policy associated with Good Cause Eviction. The department has not identified a controlling authority that requires enforcement of this policy. Therefore it is not incorporated in the QAP.

2. Fair Housing Your letter stated that the Fair Housing portion of the QAP needed more "specificity in order to explain clearly the broad scope of owners' fair housing obligations". Your concern will be taken under advisement. Specifically, OHCS will research and evaluate specific requirements of the Low Income Housing Tax Credit (LIHTC) program as it applies to all aspects of fair housing.

3. Lead Based Paint The department is very concerned with the potential presence of Lead Based Paint in housing developments particularly those projects where small children reside. Specifically, the LIHTC program does not require activities associated with the treatment, abatement and/or removal of lead based paint hazards. Other federal programs that provide funds to a project will require activities that reduce the hazards and risks associated with the presence of Lead Based Paint. OHCS will comply with 24 CFR part 35 as instructed by Treasury.

I appreciate the time you have taken to identify your concerns with the proposed QAP. I trust I have addressed the issues included in your letter. Your participation in making revisions to the State of Oregon's Qualified Allocation Plan is especially valued.

Sincerely;

Karen Clearwater
LIHTC Program Representative

OREGON LAW CENTER
813 SW Alder Street #500 Portland, OR 97205
Phone: (503) 295-2760 • Fax: (503) 295-0676

April 1, 2004

<u>BY</u> <u>e-mail</u> <u>AND</u> <u>MAIL</u>

Oregon Housing & Community Services
P.O. Box 14508
Salem, OR 97309-0409
e-mail: susan.bailey@hcs.state.or.us

Re.~ Comments on 2005/2006 QAP

To Whom It May Concern:

The Oregon Law Center and Legal Aid Services of Oregon provide free legal services to low-income Oregonians. This letter is written to request that three important tenant rights issues be incorporated into the 2005/2006 Qualified Application Plan for the Low Income Housing Tax Credit (LIHTC) Program in the State of Oregon.

I. Good Cause Eviction

A careful reading of the Internal Revenue Code shows that "good cause" eviction is required in LIHTC properties for the life of the credits' "extended use period." The argument demonstrating that such good cause is required is best articulated in a law review article in the University of Chicago Law Review by Marc John, *Good Cause and The Low Income Housing Tax Credit,* 67 U.Chi.L.Rev 521 (2000). A full explanation of this argument is attached hereto as Exhibit A. To our knowledge, every court that has addressed this argument has found "good cause" eviction to be a requirement for LIHTC recipients. *Cimarron Village Townhomes, Ltd v. Washington,* 1999 Minn. App. LEXIS 890; *Cimarron Village v. Washington,* 2003 Minn. App. LEXIS 471(2003); *Carter v. Maryland Management Co.,* 377 Md. 596, 835 A.2d 158 (2003). At least one state agency has recently been sued in federal court for failure to require their recipients to provide "good cause" eviction. Further, this argument has been used successfully in Oregon in settling multiple cases where there are no reported decisions.

The right to only be evicted for ''good cause~~ is common in properties that are federally subsidized. The policy reasons for this are clear. Since people living in subsidized housing cannot afford market rent, when they are evicted they often become homeless. This should not occur in cases where the LIHTC recipient landlord does not have "good cause" to evict. **In** addition, the use of "no cause" eviction allows for the possibility of a recipient's silent discrimination in violation of federal and local fair housing laws.

Because of the omission of this requirement in Oregon's QAP, LIHTC recipients are often under the

mistaken impression that they can enter into month-to-month tenancies and evict for no-cause. When they do so, they unlawfully threaten the housing of their tenants and run the risk of incurring costs and fees in litigation.

It is critically important to families living in LIHTC properties that Housing and Community Services (OHCS) clarify the Congressional mandate that "good cause~~ is required to evict tenants from properties subsidized with LIHTCs. Noncompliance with this requirement should disqualify applicants from receiving credits from the State.

II. Fair Housing

The background for our comments regarding fair housing is our understanding that the Fair Housing Act applies directly to the Department of Treasury, to all state Housing Finance Agencies (including OHCS) that administer the LIHTC program, and to all owners and managers of tax credit properties. These parties are required to "affirmatively further [fair housing]" as set out in 42 U.S.C. § 3608(d), and in Executive Order 12892 (Jan. 17. 1994). The duty to "affirmatively further fair housing" requires the Department and state HFAs to closely monitor tax credit properties for discriminatory practices; it also requires the Department and state HFAs to affirmatively promote nondiscrimination and racial integration in other ways, including but not limited to analyzing the racial concentration effects of LIHTC siting and adopting procedures to avoid perpetuating racial segregation in the program. *See Shannon v. HUD,* 436 F.2d 809 (3d Cir. 1970). The duty to affirmatively further fair housing is also delegated to state HFAs and owners by I.R.S. regulation 26 CFR § 1.42-9, which incorporates HUD nondiscrimination and site selection rules. LIHTC owners and HFAs are also covered by Title VI of the Civil Rights Act of 1964, and its implementing regulations, which forbid discrimination based on race, color or national origin, either by intent or as a result of a seemingly neutral policy or practice. HUD's Title VI regulations, like the Fair Housing Act, also obligate HFAs and tax credit owners to administer their programs affirmatively to overcome conditions of discrimination and take other steps to accomplish the purposes of Title VI.

We believe that the current draft of the QAP needs more specificity in order to explain clearly the broad scope of owners' fair housing obligations, the documentation required for OHCS to access the information they need to certify compliance, and key obligations to persons with disabilities and persons with limited English proficiency.

A. Providing more explicit fair housing guidance: The current draft of the QAP does not appear to give adequate notice to potential recipients of their Fair Housing and Title VI obligations. This lack of information places both owners and OHCS in legal jeopardy. A revised QAP should comprehensively list and explain each civil rights obligation applicable to LIHTC properties, including but not limited to non-discrimination by race, national origin, ethnicity, sex, familial status, disability, and source of income; the owner's duty to affirmatively market LIHTC units; and accommodations for victims of domestic violence and persons with limited-English proficiency.

B. Enhanced documentation from owners: It is not clear under the draft QAP that OHCS will have adequate documentation with which to assess owner compliance with these requirements. Owners should be required to submit basic fair housing information to

OHCS:

1. *Racial and ethnic data:* Basic data should be provided by owners of tax credit properties about the racial demographics of building occupants, applicants, and neighborhood in order to assess compliance with fair housing requirements. Data also is needed regarding the language preference of applicants and tenants who are limited-English proficient. It is hard to see how OHCS can engage in a meaningful review of compliance without this information. Owners should provide, and UCS should maintain, at least the following data:

-Overall breakdown of race/ethnicity/national origin of residents and
applicants to the property (see, for example, HUD forms HUD-2706 1 &
HUD-2706 1-H)

-Race/ethnicity/national origin of census tract & census block where the property is located

-Primary language of tenants with limited-English proficiency

-whether the project is family or elderly housing (or other specialized type of housing)

2. *Data on Section 8 voucher admissions and occupancy:* 26 USC § 42(h)(6)(iv) prohibits discrimination against Section 8 voucher holders in LIHTC properties. Basic data on Section 8 admissions and occupancy are crucial to assess owner compliance with this requirement. Owners should be required to report the number and percent of Section 8 voucher holders residing in the property.

3. *Documentation of affirmative marketing efforts:* Title VIII and its accompanying regulations, which are incorporated by reference in 26 CFR § 1.42-9 and Form 8823, require owners to affirmatively market LIHTC units to those groups least likely to apply. See 24 CFR § 200.600-640. Owners in predominantly white communities should be required to maintain and submit evidence that they have aggressively marketed units in nearby minority communities (equivalent data should be reported for projects in predominantly minority communities) or it will not be possible to assess compliance with these requirements.

4. *Reporting of discrimination complaints:* Meaningful assessment of FHA compliance will be impossible unless owners are required to report *all* fair housing actions and administrative complaints filed against them (including settled cases), along with a copy of the complaint, and the status or disposition of each claim. The current draft of the QAP does not appear to require such reporting.

5. *Disclosure of potentially discriminatory admissions practices:* Owners should disclose any geographic based admissions preferences, along with racial and ethnic data on the preference area as compared to the larger housing market area.

C. Disability: Several key issues should be included in the QAP.

1. Guidance to prospective recipients that if a property fails to comply with the Fair Housing Act's design and construction requirements the following steps at a minimum must be taken: (a) the property must have an independent assessment made of the full scope of all design and construction violations; (b) the property must provide a comprehensive time line for full correction of all violations, consistent with remedial actions approved in consent decrees approved by HUD or the United States Department of Justice, regardless of whether or not a complaint has been filed, and (c) IRS reporting must be conducted.

2. The QAP should provide detailed guidance and examples about compliance with the Fair Housing Act provisions that require that housing providers make reasonable accommodations that will permit persons with disabilities to benefit from the housing, permit reasonable modifications to the premises, and in general not discriminate against persons with disabilities. See generally HUD Notice Housing 01-02, extended by HUD Notice Housing 2003-10. Handicap discrimination represents the highest number of discrimination complaints filed over the past three years with HUD and an area where there is significant confusion among housing managers.

D. Ensurina access for limited-English proficient (LEP) tenants and applicants: The Department of Treasury, HUD and DOJ each have published guidance informing all entities that receive federal funding either directly or indirectly from each agency of their obligations under Executive Order 13166 and Title VI of the Civil Rights Act of 1964 to provide meaningful access to Limited English Proficient (LEP) persons. The Department of Treasury guidance, published on March 7, 2001, was "effective immediately." 66 Fed. Reg. 13829 (March 7, 2001) (Guidance of Federal Financial Assistance Recipients on the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons). The DOJ and HUD LEP Guidance Notices were published in 2002 and 2003. See 67 Fed. Reg. 41455 (June 18, 2002) (DOJ); 68 Fed. Reg. 70967 (December 19, 2003) (HUD). See also "Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance" (www.lep.gov/ selfassesstool.htm). It is critical that OHCS remind prospective recipients of their LEP obligations by alerting them to the Treasury, HUD and DOJ LEP guidance. OHCS should further emphasize that the DOT and HUD guidance set forth the guidelines for evaluating a fair housing complaint relating to LEP access issues. Finally, recipients should know that all parts of a recipient's operations are covered by the guidance even if only one part receives federal funding.

III. Lead Paint Abatement

There is a serious concern over lead-based paint hazards in properties that were built prior to January 1, 1978 and were rehabilitated using LIHTCs administered by the Department of Treasury under section 42 of the Internal Revenue Code. This is an issue that impacts the safety and healthy development of thousands of children. It is also, undoubtedly, an issue that will have a disparate impact on children in minority communities.

The Federal Government has recognized the extreme danger of lead paint poisoning, particularly to young children, through passage of the Residential Lead-Based paint Hazard Reduction Act of 1972, 42 U.S.C. 4852d. Protections regarding the fundamental health and safety hazards associated with lead paint are found in the U.S. Department of Housing and Urban Development's (HUD) Lead-Safe Housing Rule at 24 CFR part *35.* Sound public policy suggests that these protections also apply to the Federal

Government's largest housing program for the creation of affordable housing, Treasury's LIHTC program. We write to urge OHCS to require all applicants for LIHTCs to follow HUD's Lead-Safe Housing Rule in Oregon.

We note that the Treasury recently modified section 1 .42(5)(d)(2) of the Income Tax Regulations. This section, as modified, mandates that state housing credit agencies utilize either local health and safety codes or HUD's Uniform Physical Conditions Standards (UPCS) as the inspection standard for habitability and safety purposes. The UPCS at 24 CER part 5.703(f) requires that "IIt]he housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part *35)."* Consequently, state housing credit agencies and tax credit property owners following and complying with the UPCS, are under an affirmative requirement to abide by the procedures for evaluating and reducing lead paint hazards.

Unfortunately, the Treasury did not directly discuss in section 1 .42-(5)(d)(2) the specific types of lead paint control under 24 CFR part 35 that would govern the tax credit program. As a result, many state housing credit agencies are either confused about the appropriate lead paint evaluation and reduction procedures or have simply chosen to ignore the problem at the expense of thousands of children who reside in older properties receiving low income housing tax credits.

Oregon should clarify that recipients of tax credits must comply with appropriate lead paint abatement policies. We emphasize, however, that this issue only impacts properties built before January 1, 1978, which is a small segment of the total LIHTC property-base. Consequently, most LIHTC properties will not be affected. In addition, the cost to those tax credit owners that are covered under these lead paint control rules will be minimal. For example, HUD estimated in its Economic Analysis of the Final Rule on Lead-Based Paint, issued on September 7, 1999, that the cost of compliance with this rule would be *$95* per unit in multi-family housing. Further, HUD estimated that the savings to the Federal Government in reduced future medical and special education costs as a result of compliance with these lead control statutes would be $840 per unit.

It is also important to note that the existing HUD guidance at 24 CFR part 35 has been successfully implemented in the private housing market in connection with the tenant-based section 8 housing program. This regulation has helped reduce lead-based hazards and has improved the lives of children while at the same time reducing the ultimate costs to the Federal Government. It should be applied uniformly to properties rehabilitated using low income housing tax credits.

Thank you for the opportunity to comment on the draft QAP. We hope that the final QAP issued by OHCS will include all of the above issues.

Respectfully Submitted,

Edward Johnson
Oregon Law Center
813 SW Alder St. #500

Portland, OR 97205

Ellen Johnson
Legal Aid Services of Oregon
230 N.E. Second Ave., Suite A
Hillsboro, OR 97124-3011

EXHIBIT A

A careful reading of the Internal Revenue Code shows that "good cause" eviction is required in LIHTC properties for the life of the credits' "extended use period."'

A. The **Tax Credit** as **Originally Codified**

Since its enactment in 1986, Section 42 of the Internal Revenue Code has been amended several times. In its original form, there was no mention at all to the conditions for tenant evictions from LIHTC properties. The first mention of "good cause" eviction appeared in the LII-ITC statute as part of the Omnibus Budget Reconciliation Act of 1989.

B. The 1989 Amendment

The 1989 amendments to section 42 were substantial. In particular, section 42(h)(6)(B) of the Internal Revenue Code was amended to require the applicant to place a restrictive covenant on the property where the project will be built. IRC ~ 42(h)(6)(A). The covenant contains certain provisions that are to remain in force for a fifteen-year compliance period plus an additional extended period of another fifteen years. This provision is called the Extended Low-Income Housing Commitment ("ELIHC"). The ELIHC requires, among other things, a commitment that the fraction of low-income units in the property will not decrease for at least fifteen years after the original fifteen year compliance period has ended. IRC § 42(h)(6)(B)(vi).. The ELIHC also provided that the commitments made in the extended use agreement could be enforced by prospective, current, or past tenants of LIHTC units in state court. IRC § 42(h)(6)(B).

In a separate subsection of the statute, the 1989 amendment created two exceptions to the minimum thirty-year extended use period: (1) transfer after fifteen years to another owner who will maintain the low-income units and (2) foreclosure. IRC § 42(h~(6)(E)(i)-(ii). It was in relation to this early termination provision that the concept of "good cause" eviction was introduced into the statute. IRC Section 42(h)(6)(E)(ii) was added and provides that:

The argument demonstrating that such good cause is required is best articulated in a law review article in the University of Chicago Law Review by Marc John, *Good Cause and The Low Income Housing Tax Credit,* 67 U.Chi.L.Rev 521 (2000). It appears that the only two state appellate courts to address this issue, the Court of Appeals of Minnesota and the Maryland Court of Appeals, agree with this reading. The Minnesota court found (in an unreported decision) that "good cause" eviction was required in LIHTC

properties. *Cimarron Village Townhomes, Ltd v. Washington,* 1999 Minn. App. LEXIS 890. This finding was reiterated last year in *Cimarron Village v. Washington,* 2003 Minn. App. LEXIS 471(2003). The Maryland court agreed with this reading in *Carter v. Maryland Management Co.,* 377 Md. 596, 835 A.2d 158 (2003).

(ii) The termination of an extended use period.., shall not be construed to permit before the close of the 3-year period following such termination —

(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II) any increase in the gross rent with respect to such unit not otherwise permitted under this section.

Following the 1989 amendments, therefore, two relevant provisions were in place. First, IRC Section 42(h)(6)(B) required at least a thirty-year restrictive covenant, that could be enforced by interested low-income individuals in state court. Second, IRC Section 42(h)(6)(E) allowed for early termination of an extended use period, subject to a three-year ban on eviction of low-income tenants in the absence of good cause. At that time, there was no express connection between the contents of the extended covenant and the early termination good cause eviction protection. This changed in 1990.

C.The **1990 Amendment**

The 1990 Amendments were much more limited than the 1989 Amendments. However, one of these amendments is of critical importance to Defendant's argument here. It states, 'Clause (i) of section 42(h)(6)(B) is amended by inserting before the comma 'and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii~." Pub L No 101-508, 104 Stat 1388, 1388-506 (1990). This apparently innocuous cross-reference creates a significant change in the statute.

Clause (i) of section 42(h)(6)(B) is the provision that spells out what commitments are contained in the restrictive covenant required by the ELIHC. That clause, as amended, now prohibits the actions described in subclauses (I) and (II) of subparagraph (e)(ii). IRC §42(h)(6)(B)(i). The subclauses (I) and (II) of clause (E)(ii) cross-referenced by this provision are those originally introduced as part of the foreclosure exception added by the 1989 amendment. Critically, subclause (I) forbids "the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit." IRC § 42(h)(6)(E)(ii)(I). The appropriate reading of the amended statute is that clause (6)(B)(i) now incorporates into the restrictive covenant only the actions specifically spelled out in subclauses (6)(E)(ii)(I) and (II). The ELIHC must now prohibit "the eviction or the termination (other than for good cause) of an existing tenant of any low-income unit." Basic rules of statutory construction dictate this reading.

1. Plain Language and Statutory Construction

It is well established in Oregon that if the meaning of a statute is clear in its text and context, the court's search for meaning is over. *PGE v. Bureau of Labor and Industries,* 317 Or 606,610-611,859 P2d 1143, 1146-1147 (1993). In *PGEv. BOLl,* the Supreme Court of Oregon embraced the

maxim of statutory construction that "the text of the statutory provision itself is the starting point for interpretation and is the best evidence of the legislature's intent." Id. Similarly, federal statutes are interpreted by determining the intent of Congress, and that intent is to be derived, where possible from the plain language of the statute. *United States v. Lan ier,* 520 US 259, 267-68 n.6 (1997). Here, in addition, to these maxims of statutory construction, Congress has provided rules of construction specific to the Internal Revenue Code.

The plain language of the relevant statutory provisions, as amended, dictates that only the good cause eviction language of subclause (E)(ii)(I) is to be incorporated into the extended use agreement. The new language added by the 1990 amendment necessitates a covenant "which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii)." IRC § 42 (h)(6')(B)(I). The amendment did not state "include all of subparagraph (E)(ii)", instead, the amendment specifically combines the text of (6)(B)(I) with just the text of (E)(ii)(I) and (II).

Not only is it not a natural reading of the statute, but a literal reading incorporating all of (E)(ii) would not make sense. If the "action" which is to be prohibited is that which is described in (E)(ii), the covenant would prohibit "[tihe termination of an extended use period" following foreclosure, from "not be[ing] construed to permit" the actions under subclauses (I) and (II). The covenant would thus impose an absurd affirmative duty to construe foreclosure as permitting no-cause eviction. John, *supra* at 541.

On the other hand, reading the amendment as written makes perfect sense. Subclauses (I) and (II) contain "actions" which it makes sense to restrict. *Id.* The covenant now prohibits "(I) the eviction or the termination of tenancy (other than for good cause)" and "(II) any increase in the gross rent ...." *Id.* The plain language of the statute clearly supports the inference that Congress intended to add good cause eviction protection for existing tenants in LIHTC properties.

Further, according to the Internal Revenue Code rules of construction, (E)(ii) should not be added in its entirety. Interpreting the amended statute as including only subclauses (E)(ii)(I) and (II) is in accord with the IRC rule of construction that states "No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision of this title." IRC § 7806(b). This rule enforces the inappropriateness of presuming Congress wanted to include the entire (E)(ii) clause even though the amendment only mentioned two specific subclauses. John, *supra* at 541. Thus, under basic rules of statutory construction and the Internal Revenue Code's own rules of interpretation it is clear that Congress intended to provide good cause protection to LIHTC properties.

2. Legislative History

The plain language of the statute is bolstered by its legislative history. The Congressional Record characterized the amendment in 1990 as follows: "This bill clarifies that the extended low-income housing commitment must prohibit the eviction or termination of tenancy (other than for good cause) of an existing tenant or a low-income unit or any increase in the gross rent inconsistent with the rent restrictions on the unit." H.R. 5454, lOla Cong., 2d Sess., in 136 Cong. Rec. H7138, 7143 (Aug 3, 1990).

There is nothing in this language or elsewhere in the bill report suggesting that the prohibition on no cause eviction only applied in cases of foreclosure. John, *supra* at 542. Instead, this language clearly states Congress' intent to extend good cause eviction protection to all tenants in LIHTC subsidized apartments.

More recently, the Joint Committee on Taxation prepared a report in 1997 describing the culTent requirements of the LIHTC:

The owner of a qualified low-income housing credit building must enter into a 30-year extended used agreement with the applicable housing credit agency. This agreement must be in effect for each taxable year during which a credit is claimed
It also must provide that no existing low-income tenant may be evicted other than for good cause, and prohibit increase in gross rent above that which is otherwise allowable under Code Section 42.

Joint Committee on Taxation, Present Law and Legislative Background Relating to the Low-Income Housing Tax Credit, JCX-13-97R at 11 (Apr. 30, 1997).

The legislative history and the most recent legislative interpretation of the statute, therefore support the plain language of the statute itself. The Internal Revenue Code requires good cause eviction of tenants living in LIHTC properties throughout the life of the extended use agreement.

May 18, 2004

David A. Lokting
Stole Still Berne Lokting and Shlachter P.C.
209 Southwest Oak Street
Portland OR 97204

Re: 2005-2006 State of Oregon Low Income Housing Tax Credit Qualified Allocation Plan (QAP)

Dear Mr. Lokting,

Thank you for your letter of March 18, 2004 regarding changes to the State of Oregon's QAP. Your comments are appreciated and I am taking this opportunity to respond to the concerns your letter addressed.

The QAP will become effective upon the date that the governor signs the plan. This date will follow approval of the plan by the State's Housing Council. We have asked the department's DOJ legal counsel to review your concern in regard to a request for more particularity as to when the department would exercise its discretion to consider other relevant factors or to remove the wording "in it's (sic) sole discretion". The department will make changes to the QAP that reflect advice provided by our counsel and anticipate providing some greater particularity in this area.

If the department determined at the time of a project's final application that fewer credits were required for a project's financial feasibility than were originally awarded the department would reduce the credits available to a project. The return of credits would be requested if the applicant was not able to continue with the development. Again, we have sought advice from DOJ with respect to our characterization of the "recapture" or modification in an allocation of credits. I was not able to find the reference in the QAP to the "recapture" of credits being misplaced as was referenced in the last paragraph of page two of your letter. Please tell me where this reference is located in the QAP.

Thank you for you letter and interest in our 2005-2006 QAP. I trust I have answered your questions. Your participation in the public comment period is especially valued.

Sincerely;

Karen Clearwater
LIHTC Program Representative

Cc: Anna L. Geller
David Crawford
D. Kevin Carlson

STOLL STOLL BERNE LW1NG & SHLACHTEK P.C.
LAWYERS

David A. Lakting
dlokting@ssbls.com

March 18. 2004

VIA FACSIMILE — (503) 986-2020
AND FIRST CLASS MAIL

Director Robert Repine
Oregon Housing and Community Services Department
725 Summer Street NE, Suite B
P.O. Box 14508
Salem. OR 97301-1271

Re: 2005/2006 Low Income Housing Tax Credit Qualified Al location Plan Dear Director Repine:

We represent Geller Silvis & Associates, Inc. ("GSA"). GSA is a developer of and consultant to a wide variety of affordable housing projects in the Western United States. GSA has been an active participant in affordable housing in Oregon for over ten years, and as such has been a sponsor of or a consultant to

many projects that have applied lir and received allocations of federal lo~v income housing tax credits ("LIWTCs") that are allocated by the Oregon Tiousing and Community Services Department ("Department") is the State's designated housing credit agency under Section 42 of the Intcrnal Revenue Code ("Code").

The Department recently opened for public comment re"isions that the Department proposes to make to its LIHTC Qualified Allocation Plan ("QAP"), which the Department is required to have pursuant to Section 42 of the Code. I am writing to make a few, select comments on proposed revisions to the QAP.

First, the document that the Department has posted on its ~vebsite is entitled "2005/2006 Low Income Housing Tax Credit Allocation Plan." We assume that these revisions apply to projects receiving allocations of LIHTCs for calendar year 2005 and following. I did not see an express statement of the effective date for these proposed revisions, but we believe they should be prospective only.

Second, in two places of the proposed, revised QAP (pages 13 and 30). tIle-' Department has added that 1~tIhe Department reserves the right to determine, *ut* ***its sole discretion,*** whether the Letters of Interest or Intent, Award Letters. or Commitment Letters are satisfactory, and whether a lender or investor possesses the financial or other capacity to make a specific loan or investment." (Emphasis supplied.) We agree th~it the Department has the right to evaluate letters of interest or intent, grant or loan award lenders, or other financing or funding commitment letters for a proposed project. In fact, Codc Sccr ion 42(m) requires that a housing credit agency consider these matters, since the Code sped ties that, in making an allocation, "the housing credit agency ***shall consider...*** the sources nnd uses of funds and the total financing plan for the project. . . ." Code Section 42(m)(2)(B)(cntitled "Agency Evaluation"). However, since each state's housing credit agency is required to "consider" these matters, they are not matters that are simply left to the Departments discretion. Rather. they are matters that must be considered by the Department based on reasoned evaluation, judgment and merit. Accordingly, we believe that the words "in its sole discretion" should be struck from the sentence quoted above in both places where it appears in the QAP.

Similarly, in the same passages, you state that "[a] change in the financing source or financing terms after reservation of credits may, ***in die sole discredon of ike Department,*** result in all or a part of the credits being recaptured or reduced by. or returned to, the Department." (Emphasis supplied.) Since Section 42 requires the housing credit agency to 'evaluate" and "consider" these funding sources, the Department's determination cannot be made in its sole discretion, but must be made on the basis of the actual fac(s presented. Moreover, sponsors spend considerable time and money just to make an dpplication, and once an allocation is made, considerable more time and money will be spent in reliance on that allocation (in fact, under the 10% test, the Code actually requires the expenditure of significant stuns just to preserve the allocation). As a result, it is neither fair nor good policy to have a re-evaluation of the feasibility of a project and its funding sources turn solely on the Department's discretion. Accordingly, we believe that the reference to the Department's discretion here should also be eliminated.

In addition, LIHTC projects involve complex financing, usually from numerous sources. Changes of some sort are common. Due to the reliance that sponsors will place on the allocation once received, and

the likelihood that some financing tenns will change, or at least become more defined, as funding actually occurs, ~ve believe that only material changes should result in the possibility of credits being reduced or returncd. Because the consec~uences of a reduction or return would be dramatic, the Department should have in place some set procedure to address these situations, so that a determination can be obtained from thc Department expeditiously.

Finally, the housing credit agency's authority to assess feasibility is made (1) at the time of application, (2) at the time of allocation, and (3) when the building is placed in service. Code Section 42(m)(C)(i). As a result. I believe that the reference to "recapture" of crediti~nisplaced.

Based on the above, we suggest that the sentence quoted he reviscd to read: "A material change in the financing source or financing terms after reservation of credits may result in all or a part of the credits being reduced by, or returned to, the Department, if. after ~raluation and onsideration of all relevant facts, the Department reasonably determines that a duction or return of credits is required so that the amount of credits allocated to the project does not exceed the amount necessary for financial feasibility of the project and its viability throughout the credit period." See Code Section 42(m)(2)(A).

Thank you for your consideration of these comrncnts. I may supplement them further during the comment period, and GSA may submit its own, supplemental comments.

Very truly yours
David A. Lokting

DAL:ksh
cc: Anna L. Geller (via fax)
David Crawford (via fax)
D. Kevin Carlson

May 18, 2004

Michael Bodaken
National Preservation Initiative
1801 K Street N.W. Suite M-100
Washington, D.C. 20006

RE: 2005-2006 State of Oregon Low Income Housing Tax Credit Qualified Allocation Plan (QAP)

Dear Mr. Bodaken;

Thank you for your letter of April 1, 2004 in regard to proposed changes to the State of Oregon's QAP for 2005 - 2006. We recognize your support in our efforts to preserve and improve multi-family affordable rental housing. The additional information you provided on activities that other states are undertaken to

support the preservation of multi-family housing was also appreciated. It is reassuring to know that our efforts are being noticed. The State Housing Council has provided strong support to OHCS's efforts to preserve project based rental subsidies on existing affordable housing properties.

Sincerely;

Karen Clearwater
LIHTC Program Representative

NATIONAL
HOUSING
TRUST

April 1, 2004

Susan Bailey
Oregon Housing and Community Services
PG Box 14508
Salem, OR 97309-0409

Re: Draft 2005/2006 Qualified Allocation Plan

Dear Ms. Bailey:

The National Housing Trust is a national nonprofit organization formed to preserve and improve affordable multifamily homes for low- and moderate-income use. The Trust saves multifamily properties at risk of conversion to market rate housing and resolves the problems of "troubled" properties that suffer from physical deterioration and financial and social distress. We pursue our mission on behalf of this housing and the families and seniors who live there. Over the past 8 years, the Trust and its affiliate, NuT/Enterprise, have saved more than 15,600 affordable apartments in 42 states, involving the acquisition and rehabilitation financing of over $200 million.

We write to thank the Oregon Housing and Community Services Department for its continued support of the preservation and improvement of existing, affordable housing in the Department's Qualified Allocation Plan. We strongly support the continuation of the Department's preservation set-aside for competitive 9% low income housing tax credits. We believe this set-aside is justified for the following reasons:

- The enclosed report illustrates Oregon's significant preservation problem **96** project-based Section 8 properties with more than 3,683 Section 8-assisted units will expire in Oregon before the end of FY 2006. This housing is a unique resource, housing some of Oregon's most vulnerable families and elderly people. According to HIJD, the average income of those residing in federally-assisted and insured housing is less than $15,000 on an annual basis.

- There is a national trend to set aside or prioritize tax credits for preservation. The Trust has conducted a preliminary study and has found that 42 state agencies currently prioritize or set aside competitive tax credits to preserve and improve affordable, subsidized housing (see attachment).

- It is fiscally prudent for Oregon to balance its allocation of tax credits between new construction and preservation. The underwriting of preserving an existing asset, with an operating history, existing resident profile, management history, and the like is certainly no greater risk than underwriting a new development in a yet to materialize market.

I urge you to determine a balance between creating new production and preserving existing housing and thank you for the opportunity to comment on this important issue for the State of Oregon.

Sincerely,

Michael Bodaken
Executive Director

Enclosures (2)

EXHIBIT H

PROPOSED CHANGES TO THE QUALIFIED ALLOCATION PLAN FOR 2005-2006

PROPOSED QAP REVISIONS FOR 2005/2006

Introduction

For your consideration are proposed changes in the administration of the State of Oregon's Low-Income Housing Tax Credit (LIHTC) program. Oregon Housing and Community Services (OHCS) is the designated (by the governor) administrator of the LIHTC program. The Low Income Housing Tax Credit Allocation Plan or QAP governs administration of the LIHTC program. Described below are changes, proposed by OHCS, to the QAP.

In late January changes to the QAP were proposed by OHCS, distributed to interested parties, and published on OHCS's web site. A public comment period commenced on March 5, 2004 and concluded on April 3, 2004.

Two public hearings were held to solicit testimony on proposed changes to the QAP. The hearings were held in The Dalles and Salem on March 16, 2004 and March 18, 2004 respectively (approximately 2 weeks before the end of the comment period). The public was invited to comment on any section of the QAP. The public was also invited to submit written testimony to OHCS before and after the hearings. Public testimony obtained at the hearings, and via the mail, has been incorporated into preparation of the document you are reviewing. Each individual who provided OHCS with testimony has received a written response. A summary of the comments and responses will be included as an exhibit in the final QAP.

The 2003/2004 Low Income Housing Tax Credit Allocation Plan or QAP for the state of Oregon was approved by Governor John A. Kitzhaber, MD on April 17, 2002. Subsequent Congressional action, Internal Revenue Service Rulings and departmental experience in administering the LIHTC program makes changes to the 2005/2006 QAP necessary.

Significant changes to the 2005/2006 QAP include the following:

- Award of credits to existing LIHTC projects
- Award of additional credits before and after a project has received a carryover allocation
- Clarification of the timing of Applicable Percentage Credit Rate Lock for projects awarded competitive credits
- Department discretion on award of current year or forward allocation of credits
- Subsidy layering changes
- Rehabilitation requirements
- Sponsor capacity addressed
- Policy on units reserved for property management
- Additional minor changes specifically described below.

Several requirements of the program, described in the QAP, have been modified to conform to the policies advanced by the National Council of State Housing Agencies. These policies tend to be consistent from state to state. Some changes are suggested to reduce ambiguities associated with administration of the LIHTC program. Finally some changes reflect an effort to make administration of the QAP consistent with other programs of OHCS most specifically administration of the Consolidated Funding Cycle process which governs award of the competitively awarded Low Income Housing Tax Credits.

The administration of many policies, historically included in the QAP is included in the 4 and 9 percent LIHTC application materials. Note that the 4 (tax exempt financed) and 9 percent applications are virtually the same. Processing of the applications however remains significantly different because the credits awarded in conjunction with tax exempt financing are not competitively awarded. Applicants for 4 percent credits used in conjunction with departmental bond programs, i.e., the Risk Share and Elderly and Disabled loan applications (administered by OHCS's housing finance section) will continue to include a 4 percent tax credit supplemental. Financial documentation requested for both programs is the same. Applicants simultaneously applying for LIHTC and bonds will continue to provide supplemental materials and fees for tax credits with their bond application.

A summary of the revisions with corresponding page in the QAP noted is provided in this document. The revised changes incorporated into the QAP will take effect after the governor signs the QAP and will impact all 4% projects as well as competitive projects awarded credits subsequent to the governor's approval of the plan.

The QAP provides the following mechanism for amendment of the QAP as follows:

"Upon approval of the overall plan by the Department, the State Housing Council and the Governor, the Department may make minor and technical amendments to this Allocation Plan when changes are necessary to administer the Low-Income Housing Tax Credit Program to effectively serve Oregon's low-income housing needs, and to conform with amendments to IRC Section 42. Major amendments to the QAP require formal approval and a public process.

If any provision of the Allocation Plan (and documents included herein by reference) is inconsistent with the provisions of amended IRC Section 42, including any future amendments thereto, or any existing or new State administrative rules governing the LIHTC Program, the provisions of IRC Section 42 and/or the State Administrative Rules take precedence and the plan will amended accordingly."

All other aspects of the 2003-2004 QAP have remained in force during the amendment process.

Proposed changes to the QAP are bold and italicized. Existing language that is proposed for deletion are bold and struck through. Existing QAP text that is NOT proposed for modification or deletion is in normal type face and in "quotes".

Explanation

Description of the relevant new policy or change to the QAP.

Discussion of Changes to the 2005/2006 Qualified Allocation Plan

1. Application Protocol: Competitive Credits (page 18 of 2003-4 QAP add in paragraph 1, Initial Application, after application fee)
There shall be no refund of application fees.

Explanation

This change reflects OHCS's current practice.

2. Application Protocol: Competitive Credits (page 18 of 2003-4 QAP add a third item)

3. Any increase in the annual allocation of tax credits made after the departments offer to Reserve Tax Credits will require payment of a fee equal to 5% of the requested increase in tax credits.

Explanation

This change reflects OHCS's current practice.

3. Policy on Sponsor Characteristics (page 29 of 2003-4 QAP add an additional paragraph to Sponsor Characteristics)

Capacity of previous program participation includes but is not limited to the past performance of any member of the development team, claims with contractor board and other considerations as deemed appropriate at the sole discretion of the department.

Explanation

The current QAP requires that a LIHTC project sponsor have the ability to develop and deliver a project in a timely fashion. OHCS assumes that the project's development team can deliver a project without significant assistance from OHCS staff. The additional language proposed provides OHCS with the ability to consider sponsor capacity in its evaluation, ranking and decision making associated with the award and/or allocation of Low Income Housing Tax Credits.

A sponsor's failure to deliver a project within the prescribed time frame of the LIHTC program poses a risk to other members of the development team and the potential for dire financial consequences to members of the development team. If tax credits are returned to the state after the end of the year of allocation OHCS may not be able to allocate its' full credit ceiling and will lose the opportunity to receive and allocate national pool credits the following year.

4. Financial Feasibility (page 29-30 of 2003-4 QAP, replace first bullet as follows, modify replacement reserve bullet and add additional bullet that address operating expenses as indicated below)

Primary Debt Service Ratio ***is recommended to be*** no lower than ~~1.10~~ ***1.15 (1.10 for Rural Housing Service Developments) until initial stabilized occupancy*** and no higher than 1.20 (unless accompanied by an explanation ~~from the lender~~. ***OHCS will consider vacancy rates, ability to raise rents and historic operating cost escalations typical in the marketplace in determining debt coverage before and after initial stabilized occupancy. Repayment of must pay debt, e.g., principal amount of deferred developer fee, may increase primary debt service ratio.***

- Replacement reserves of no less than ~~$200 per unit per year for new construction~~ ***$250 per unit per year for new construction development for seniors and $300 per unit per year for new construction development for families and rehabilitation developments. These figures*** ~~and no less than $300 per unit per year for rehabilitation may be used as~~ ***are*** guidelines. ~~, however, a~~ ***A*** more precise measure of reserves needed will come from a carefully prepared Reserve for Replacement schedule.
- ***Itemized operating expense and vacancy rate projections must be provided and supported by reasonable and credible evidence if adequate operating cost and vacancy rate data is not available.***

Explanation

Deferred developer fees and repayment of other loans (e.g., repayment of a HOME loan where HOME funds were retained in basis), in certain circumstances, should be considered must pay debt. The project owner, not the lender, would be providing OHCS with an explanation of debt beyond conventional financing. Appropriate underwriting by OHCS requires that must pay debt be included in the primary debt service ratio otherwise a project may not be able to satisfy the requirements of the LIHTC program (e.g., failure to repay a HOME loan could result in the exclusion of these funds from project basis).

Debt service ratios that do NOT include must pay debt may overstate the availability of funds to service debt and/or may have insufficient funds to service must pay (other than lender) debt.

The Working Group for the National Council of State Housing Agencies has recommended in fact that the minimum debt coverage ratio of 1.10 needed to be increased to provide greater assurance the Low Income Housing Tax Credit project remain viable for their affordable use period. Other significant factors that are closely related to determining an appropriate debt service ratio, e.g., operating cost and rent escalations, are now specified in this practice.

The change in replacement reserves is an upwards adjustment from the previous standard for new construction established in the late 1990s. The new standard recognizes the need for higher reserves that are more in line with current expenses. Adequate reserves are critical because rents are restricted and may not keep up with operating, maintenance, and replacement costs. Certain projects may suffer more or less wear and tear than 'typical' properties and in general a capital needs assessment supports the reserve needs for rehabilitation projects. Realistic rates of escalation, i.e., inflation, should be considered when estimating operating reserve requirements.

Itemized operating expense and vacancy rate projections are now required in the preparation of applications requesting the allocation of Low Income Housing Tax Credits. This requirement is being adopted by many state agencies that administer the LIHTC program.

5. Long-Term Affordability (page 31 of 2003-4 QAP, replace existing paragraph with paragraph below)

All projects must commit to an extended use term of a minimum of 30 years of affordability. Projects with tax-exempt bond financing must commit to an extended use term of the greater of 30 years or the outstanding term of the bonds. The owner must file a Restrictive Covenant (provided by Oregon Housing & Community Services) to waive the right to petition the Agency to terminate the extended use term as described in Section 42 of the Internal Revenue Service Code. Additional consideration will be given to projects, which agree to an extended use period beyond the minimum 30 years.

Explanation

This language clarifies the Internal Revenue Service requirement with respect to the period of affordability for ALL tax credit projects. This language is adapted from the National Council of State Housing Agencies and has been adopted by several states.

6. Architectural/Site Review (page 31 of 2003-4 QAP, delete the following paragraph)

> **~~Once the formal application is received, the Department reviews projects twice before construction begins. Preliminary Architectural Review is~~**

~~**made during the Schematic and Design Development phases of a project. Final Architectural Review is then made when Drawings and Specifications are nearly complete and before the project is submitted for building permit.**~~

Explanation

This paragraph is NOT consistent with the explanation of the Architectural/Site Review process described in the consolidated funding cycle application. The previous paragraph states that "the standards and processes are included in the CFC and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department."

7. Determining the Allocation Year of Tax Credits Insert after Project Evaluation for Appropriate Credit Amount page 33 of 2003-4 QAP

When making a reservation of LIHTC the department reserves the right to decide whether a project will receive an allocation from the current year credit ceiling or an allocation from the following year's credit ceiling (forward allocation). This decision shall be based on factors including, but not limited to, the project's readiness to proceed and the likely timing of a project's ability to satisfy the 10% of expected basis test. OHCS reserves the right to exchange a current year allocation with a future's year credit allocation if it is at risk of not allocating all of its current year credit ceiling.

Explanation

Projects that successfully compete for the 9% (70 percent of present value) tax credits should be awarded credits that reflect realistic project timelines. For several years the department has chosen to forward allocate most of the 9% credits, which is an allocation of credits from the following year's credit allocation or credit ceiling. The proposed change intends to bring OHCS's current practice into conformance with changes made by the Community Renewal Tax Relief Act of 2000.

Projects with a reservation of current calendar year credits must obtain a carryover allocation in the current calendar year (typically at the end of the calendar year) and must meet the 10 percent test no later than six months after the date of allocation. If such a project was unable to move forward and returned credits prior to receiving its carryover allocation (that is before the end of the calendar year) the timing might preclude OHCS from finding another project that could utilize current year credits. Failure to use all current year credits would preclude OHCS from being able to receive its share of national pool credits. Oregon usually receives an annual

allocation of approximately $80,000 to $100,000 in national credits. This amount of tax credits results in the generation of nearly $1,000,000 in project equity and would be lost if the state did not use all of its returned credits.

Recently amended stacking rules provide OHCS with additional flexibility in the allocation of its credits. The stacking rule was amended, as published in the Federal Register on January 6, 2004, to provide that Credit is allocated first from the unused carry forward component (credit ceiling from the prior year that was never allocated) and secondly from the sum of the population (annual credit ceiling), returned credit and national pool credits. In short the revised "stacking rule" allows returned credits to be used the following year after use of any remaining credit ceiling.

The state's failure to allocate the entire credit ceiling from the prior year precludes the state from applying for and receiving national pool credits the following year.

The proposed change will provide OHCS with the discretion to allocate current calendar credits to those projects that the department believes have the greatest likelihood of meeting current year carryover allocation requirements. Forward allocations would be used for the balance of projects. This practice best ensures that OHCS is able to allocate all of its' current year credit ceiling.

8. Policy on Applications by Sponsors Who Request Additional Tax Credits after an Initial Award.

Modifications to existing language on pages 39-40 2003-4 QAP

"Sponsors who receive an initial reservation of annual per capita LIHTC may request additional tax credits, if the project has experienced an increase in costs and eligible basis exists to allow the credits to be issued."

Requests for additional per capita credits prior to a project receiving a carryover allocation do NOT require an application via the competitive funding round (CFC process). A project with a multiple year allocation of credits will NOT require a CFC application if a carryover allocation has NOT been issued for the latest year of credits. However these projects may NOT request an allocation of credits such that the project exceeds the $700,000 per capita funding cap.

A project that has been funded with Low Income Housing Tax Credits AND has received a carryover allocation for all of the credits it was awarded must compete for an award of additional tax credits.

"The department will evaluate all requests and may or may not grant such requests depending upon the need for the additional credits, other potential funding sources available and the availability of credits for allocation by the Department. Applications for additional credits must be made prior to the building(s) being placed in service.

The application for additional credits must include an explanation of the following:

A. The process used to determine the cost estimates provided with the initial and subsequent application.

B. Justification by line item of the differences in cost between the original and current Uses of Financing. (A copy of the initial Sources and Uses of Financing and revised Sources and Uses must be attached.)

C. Other measures considered or implemented to mitigate cost increases, including but not limited to:

- Value engineering,
- other reductions in project specifications,
- rent increases to allow added debt service (as applicable for the population to be served),
- other sources of financing examined other than Department funds (provide documentation of denials),
- a reduction in the scale of the project and/or,
- a deferral or reduction in developer fees.

D. Contingency plans if the Department rejects the application."

"The Department will amend and restate all program documents," ***and request an additional reservation fee,*** "including but not limited to the Reservation and Extended Use Agreement, for all applicants who receive additional tax credits AND for sponsors who might need a reallocation of credits for technical, legal and other reasons who meet the 24-month project completion schedule and Carryover Agreements…"

"Projects previously awarded credits that are currently in their initial compliance periods for pre-1990 projects and in their extended use period for post-1990 projects, will not be eligible to apply for additional credits until the extended use period is over unless the additional credits will provide a clearly demonstrable benefit to the tenants ***Existing LIHTC projects are not eligible to receive additional acquisition credits until the end of the initial owner's fifteen-year compliance period.***

Explanation

A recent change in the 'stacking rule' is the basis for clarifying the requirements for applying for additional credits after initial award. Projects with current year credits have essentially already competed for the credits if requesting credits prior to issuance of a carryover allocation. Projects that were forward allocated credits have also competed for the credits and should not need to re-

compete for an allocation of credits which is the same as their initial award provided the total amount of credits awarded to a project does NOT exceed the per project cap of $700,000. Typically, a project requesting credits AFTER receipt of its' carryover allocation, is requesting an allocation of current year credits NOT an increase to the prior year credits that were forwarded allocated to the project. The request for additional credits, when made after carryover allocation, will be for credits from the current year credit ceiling not the prior year's credits ceiling (the year of credits that the project originally competed for). A request for additional credits thus requires a competitive application as credits from a different year are being sought. An award of additional credits, even greater than the project ceiling cap of $700,000, may be appropriate based on the merits of the project in light of the other demands for this limited resource.

The limitation on the issuance of additional acquisition credits is intended to prevent a project from receiving more than one allocation of Low Income Tax credits associated with the acquisition of the property before the end of the full fifteen-year recapture and initial fifteen-year compliance period. This proposal is consistent with the Internal Revenue Services intent of the award of tax credits.

9. Policy on Applicable Credit Percentage Rate Lock Additional policy to follow Policy on Projects by Sponsors Who Request Additional Tax Credits after an Initial Award page 40 2003-2004 QAP

Projects receiving an award of competitive credits have the following opportunities to lock the Applicable Credit Percentage Rate (Applicable Rate).

- ***In general the Applicable Rate is determined the month the project is placed in service. The placed in service date for a new or existing building is the date the building is ready and available for its specific function and usually the date the first unit in each building is certified as suitable for occupancy as governed by state or local law.***
- ***Rather than use the placed in service election the owner may elect to use the Applicable Rate determined the month the owner and Oregon Housing and Community Services enter into a binding agreement to allocate the Credit to each building. OHCS considers the fully and properly executed Reservation and Extended Use Agreement to be the binding agreement between the owner and OHCS.***
- ***The Applicable Rate for projects receiving more than one year's allocation of credits will have the applicable rate set at the applicable rate established in the earliest binding agreement between the owner and OHCS. The Applicable Rate will be the same for each year of credit allocation.***

- ***The Applicable Rate for credits on projects receiving an award of credits, subsequent to the initial award, will be the same as the Applicable Rate established in the earliest binding agreement.***
- ***Owners of projects receiving an allocation of credits <u>entirely</u> from a different year(s) of credit ceiling than originally awarded to the project must enter into a new binding agreement IF they chose to establish the applicable rate prior to placed in service.***

If the building is financed with tax-exempt bond proceeds the owner may elect to use the Applicable Rate for the month of bond issuance. The election statement must meet the requirements set forth in Internal Revenue Section Regulations Section 1.42-8.

<u>Explanation</u>

This policy clarifies the procedures associated with projects awarded tax credits competitively. Existing Internal Revenue Service (The Service) regulations provide specific requirements that govern rate lock elections for projects financed with tax exempt bonds.

The Internal Revenue Service provides states with greater flexibility when establishing applicable rate lock requirements for projects awarded competitive tax credits. The Service provides two times for establishing the rate lock. The rate lock may be established at the time a binding agreement between the project owner and the allocating agency (OHCS) is entered into. OHCS considers an executed Reservation and Extended Use Agreement (signed and notarized by the project owner and OHCS) its' binding agreement. The rate lock may also be established at the time each individual building, within the larger project, is placed in service.

The Internal Revenue Service has provided guidance that addresses the situation that occurs when a project has received an allocation of tax credits from more than one year's credit ceiling. While electing the rate lock at placed in service is always an option, IF a binding agreement was issued, i.e., a Reservation and Extended Use Agreement was executed by both parties, the rate established at the time of the binding agreement is the rate for any credits associated with the project regardless of when they are awarded. The Service did not intend for projects to have multiple applicable rates.

If a project receives two consecutive years of allocation and entered into a binding agreement in which the rate was locked for the first year's allocation of credits then the second year's allocation would be the same as the first year. The same is true for any project requesting additional credits after the initially executed Reservation and Extended Use Agreement. Once an initial election of rate has been made a projects can not change its election at a later time and/or retroactively change its earlier rate lock.

If a project receives an allocation of credits from a year different than its initial allocation than a new and/or amended Reservation and Extended Use Agreement must be prepared and executed. The new agreement must be binding and if a rate election is made this election would govern the applicable rate for the project.

10. Policy on Subsidy Layering (Replaces balance of subsidy layering language beginning with If there…page 42 of 2003-4 QAP)

"If there is no identity of interest (identity of interest is a financial, familial, or business relationship that permits less than arm's length transaction and includes but is not limited to existence of a reimbursement program or exchange of funds, common financial interests, common officers, directors or stockholders; or family relationships between officers, directors, or stockholders between the developer and general contract/builder), the following general contractor/builder's profit applies:"

- ***Builder's profit up to 8% of construction costs***
- ***Builder's overhead up to 2% of construction costs***
- ***General requirements up to 6% of construction costs (excluding contractors liability insurance)***
- ***Builder's profit, overhead and general requirements may not exceed 14% of total hard construction cost (less profit, overhead and general requirements).***

Explanation

This clarification will make OHCS's subsidy layering policy consistent with the subsidy layering review requirements of the National Council of State Housing Agencies.

11. Policy on property management units (page 45 of 2003-4 QAP add after Disbursement of Units and Include in Table of Contents)

Policy on Property Management Units

A full-time resident manager's unit or other supportive units in an LIHTC project may be required based on the size and/or special needs of the individual project. Some projects may utilize more than one unit, again based on the size and/or special needs of the individual project. Currently OHCS requires sponsors to designate in the restrictive covenant documents any management units that will not be included in the applicable fraction.

For buildings placed in service after September 9, 1992, the manager's unit may be considered as "common area" within a rental development. Under this interpretation, (see IRS Revenue Ruling 92-61), the unit is excluded from the low-income occupancy calculation; and the unit may be used by the manager without concern for the effective rent charged to or the income level of the manager. If this option is elected, the unit occupied by the resident manager is included in the building's eligible basis; but excluded from the applicable fraction for the purposes of determining the building's qualified basis.

To qualify as a common area the unit must support or be reserved for the benefit of all the rental units. The unit can only receive this designation if the manager or any other position utilizing a unit (i.e., maintenance) is full-time to that project. The position description must clearly indicate that the position is full-time, (OHCS considers anything more than 32 hours a week full-time), and that the position does not utilize the unit to support other employment duties unassociated with the project that may be assigned by the sponsor or property management company. For example, if an on-site manager is assigned by a property management company to manage multiple projects in the same locale, and it appears that employment at the primary project only comprises 50% of the employment, then the unit cannot be called a common area unit. OHCS reserves the right to approve/disapprove any management units. The following criteria (not inclusive) may be considered in approving/disapproving units:

- ***Size of project***
- ***Type of project (i.e., elderly, family etc.)***
- ***Proximity of the project to property management offices***
- ***Community resources available for maintenance/supportive services etc.***

The owner must make a designation of the unit as common space or as a low-income residential unit. All developments must notify OHCS of the status of the full time resident manager's unit and any other staff units. As long as the number of previously approved management units are not increased, the owner shall be permitted to move the management units within the project as long as the change is reported on the owner's annual certification of compliance.

<u>Explanation</u>

This policy clarifies when a manager's unit may be considered common area. This policy clarifies, for the development community, an approach to more accurately determine the number of manager's units that are appropriate and best ensures that such units will meet the requirements of IRS Revenue Ruling 92-61.

12. Developer Fee Policy (page 45 of 2003-4 QAP, add the following sentence)

To be included in tax credit basis, deferred developer fees must be due and payable at a date certain generally within a time period that does not exceed 15 years. ***Cash-flow projections must support the expectation of deferred fee payment within 15 years of a project's placed-in-service date.*** If fees are permanently contributed to the project, they must be paid to the developer and then contributed to the project if the fees are to be included in tax credit basis.

Explanation

The sentence is added to acknowledge the Internal Revenue Service requirement that in order to include a deferred payment in project basis cash-flow projections must support repayment of the deferred payment within 15 years.

13. Rehabilitation Requirements/Replacement Reserve Policy (page 48 of 2003-4 QAP)

"The department requires all applicants for LIHTC acquisition and rehabilitation credits to complete a thorough rehabilitation assessment ***by an approved third party unless an exception is provided by OHCS. All projects are subject to inspection, by OHCS and/or an OHCS approved third party representative(s), to make certain work has been performed to the department's satisfaction. Architectural*** ~~**these**~~ "standards are included in the CFC and/or the Multi-family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department."

~~**. These standards are included in the CFC and Multi-Family Rental Housing Risk Sharing Program Applications and/or any additional program materials adopted or used by the department.**~~

Explanation

The inserted language adds a performance standard for all rehabilitation work proposed AND

provides authority for the department to inspect the project. The deleted language is duplicative.

14. Compliance Monitoring Policy (page 54 of 2003-4 QAP) Description of the department's participatory reporting requirements. This language should be identical to the language in the Consolidated Funding Cycle Application, or alternatively

Participatory Requirements. Oregon Housing & Community Services requires that all projects comply with the participatory requirements as described in the Consolidated Funding Cycle, 4% LIHTC application(s) and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the department.

15. Editorial Revisions Proposed for 2005/2006 QAP

Pages referenced are those found in the 2003/4 QAP) Bold ***and italic*** denotes recommended changes/additions. Deletions are indicated in **~~bold strike through~~**.

Page 5 "each state is allocated annual tax credits in an amount equal to **~~$1.75~~** $1.80 per state resident ***(as of 2004),*** with an increase indexed to inflation thereafter."

Explanation

The increase in the annual allocation, per state resident, is indexed to inflation. Adjustments are made annually in increments not less than 5 cents. This increase to $1.80 from $1.75 (per state residents) reflects an inflation adjustment for two years.

Page 9 "For each credit year **~~2003 and 2004~~** ***2005 and 2006***, the Department will award approximately $6.0 million per year in per capital tax credits for the State of Oregon. A set-aside of 25% of the per capita tax credits for expiring use project, project where at least **~~30%~~** ***25%*** of the project's units are federally rent subsidized (see Targeted Set Asides), has been established."

Explanation

The proposed change is incorporated into the QAP to ensure consistency with other funding programs offered by OHCS included those offered through the Consolidated Funding Cycle.

Page 11 " Preservation projects include but are not limited to those federally financed existing projects where at least **~~30%~~** ***25%*** of the existing project's units have project based rental assistance…

Explanation

This change provides consistency with other OHCS programs that address preservation projects.

Page 13 "Credit allocated to a building ~~**cannot to**~~ can not exceed ***the*** amount"

Explanation

Grammatical correction.

Page 23 "Those projects receiving a conditional offer to reserve tax credits must comply with all conditions outlined in the Offer Letter within ~~**30**~~ ***90*** days…"

Explanation

This change reflects current practice.

Page 30 Last sentence of paragraph in Architectural/Site Review add the following. "The standards ***and processes*** are included in the CFC…"

Explanation

This change is a clarification of existing practice.

Page 54 Compliance Monitoring Fees. "The IRS ~~**now**~~ requires ~~**the**~~ inspection of projects every three years. ~~**, therefore effective 1/1/2001 m**~~ **M**onitoring fees ***are*** ~~**will be**~~ $25.00 …"

Explanation

This change reflects current practice and Internal Revenue Service requirements for the Low Income Housing Tax Credit Program.